RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक १०] गुरुवार ते बुधवार, मे १५-२१, २०१४/वैशाख २५-३१, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

IN THE INDUSTRIAL COURT AT MUMBAI

COMPLAINT (ULP) No. 1355 OF 1994.—Vasudeo Baburao Bhojane, 20/1057, Kher Nagar, M.H. Board, Bandra East, Mumbai 400 051.—*Complainant.*—*Versus*—M/s. Carona Limited, Caves Road, Jogeshwari East, Mumbai 400 060.—*Respondent.*

In the matter of complaint of unfair labour practices under items 5 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

PRESENT.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Shri S. S. Pathak, Advocate for the Complainant.
Shri N. M. Makandar, Advocate for the Respondent.

Judgement and order

1. The Complainant employee has brought this complaint against the Respondent company for having committed unfair labour practices under items 5 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971, for declaration of unfair labour practices and other reliefs thereto.

2. Briefly stated the case of the Complainant is as under :—

In the year 1956, he joined the Respondent company on daily rated basis. Lastly, he was working as a Foreman, but his duties remained to be the same. He was not assigned any managerial or administrative powers, except granting leave of the employees, whose leave was not balanced. He used to recommend for the same to the higher authority. Thus, he was given higher designation without changing his duty. He has further contended that at the beginning, he was an active member of the Carona Sahu Employees Union, which was a recognised union and also Vice President of the said union. From the year 1991-92, the Respondent company started in confrontation with his union. Later on the Respondent company sponsored another union viz. Carona Khatau Employee Association with a view to deprive the legitimate rights of its employees. The Respondent company also refused to bargain collectively with his union. Therefore, his union had filed several complaint against it before

the Industrial Court. He has further contended that he gave a letter dated 27th April 1993 supported by his school leaving certificate and thereby informed the Respondent company to correct his birth date in the records of the Respondent company. The Respondent company issued a reply dated 16/17 May 1994 and thereby refused to make any correction in his birth date. He has further contended that the birth years came to be recorded in the record of the Respondent company without having any proof of date of birth. On receipt of the company's reply he personally met the Factory Manager and as per the direction given by the Factory Manager he submitted his affidavit dated 1st June 1994, On submission of the said affidavit he was under the impression that his birth date had been changed. He has further contended that on 21st November 1994 he received a letter from the Respondent company and he was informed about his superannuation at the end of 31st December 1994. Immediately after the said retirement letter, he approached the Respondent company by his letter dated 15th December 1994 and thereby he brought the fact to the notice of the Respondent company about its illegal action of retiring him from service. He has further contended that the model standing orders are applicable to the Respondent company and as per the said orders the age of retirement is 60 years. His birth date is 28th September 1939 therefore the Respondent company could retire him on 31st December 1999. Therefore, the action on the part of the Respondent company in retiring him from service prematurely and in contravention of the standing orders amounts to unfair labour practices under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. He has further contended that he was active member of Carona Sahu Employees Union and hence the Respondent company failed to withdraw the letter of his retirement. One Mr. K. S. Kulkarni and others had retained in the employment of the Respondent company even after the completion of 60 years of their ages. Thus, the Respondent company is engaged in unfair labour practices under item 5 of Schedule IV of the said Act. Hence this complaint for the reliefs as given in the prayer of the complaint.

3. On appearance, Mr. Mohan Narayan Shetye the Assistant Manager Personnel of the Respondent company has filed his affidavit at Exh. C-4 as reply to the *interim relief* application of the Complainant. Later on the Respondent company filed an application/purshis Exh. C-8 and thereby adopted the same affidavit as its written statement. It depicts from the affidavit that the Complainant was working as the Production Officers in charge of the Heel Press Department in the Respondent company. About 89 employees were working under him. These employees included 2 Officers, 2 Foremen, 3 Supervisory staff etc. He was drawing the not salary Rs. 3670 per month and gross salary of Rs. 5105 per month. He was doing mainly supervisory and managerial functions. He was empowered to sanction leaves, privilege leave, casual leave, sick leave etc. of the workmen and to initiate the disciplinary action against the defaulting workmen, working under him. He was required to guide control and motivate the workmen working under him and to achieve the production results and targets. He used to recommend the promotions of his subordinates he was also fully empowered to transfer the workmen and the staff of his department from one section to another section for better utilization of the man power working under him. He was also submitting production reports of his department to his spurious *i.e.* Production Manager and Dy. Production Manager of the Respondent company. It further depicts that the present Complainant was not an employee within the meaning of the definition under the Industrial Disputes Act and under the M.R.T.U. and P.U.L.P. Act. Therefore, this Court has no jurisdiction to entertain the present complaint. It further depicts that as per the records of the Respondent company, the Complainant joined his service on 20th September 1956. At the time of joining his service he gave his date of birth as 1936. He thereafter did not take any action/objection about the same within long period of his service. It further depicts that xerox copy of the school leaving certificate dated 12th April 1954 produced by the Complainant shows his date of birth as 28th September 1939. Thus it show that he was in possession of the said school leaving certificate when he joined the Respondent company, but he failed to produce the same at the time of his joining the service. Even he could not produce the same within a reasonable period, after his joining the service. The reason of not producing the same is that he was under age according to his school leaving certificate. Thus, he concealed the fact about his birth date with a view to get the employment

in the Respondent company. Now, he cannot get his birth date changed at the fag end of his service. The Respondent company, therefore, issued a reply dated 16/17 May 1994 stating therein that he had already taken advantage of his wrong thing and he cannot, therefore, take another advantage of the same false statement giving the date of birth at the time of his joining the service. It further depicts that the Complainant was under the category of the management staff and therefore he was not governed by the model standing orders. He was governed by the rules and regulations and the long standing practice applicable to the officers of the Respondent company. He was also under the non bargainable category of the employee, The retirement age for the officers of the Respondent company is 58 years and not 60 years. Since he has made the declaration about his year/date of birth as 1936 at the time of joining the service, he would be retired from service at the end of 1994. It further depicts that the Complainant employee had n discussions with the Factory Manager and the Factory Manager had not given any promise or assurance to him. In the circumstances, he has knowingly made false allegations. It further depicts that the Complainant has approached this Court with false and cooked up case, therefore he cannot be allowed to take advantage of his own wrong and the false statement made at the time of his joining the service. Thus, the Respondent company has not indulged in any unfair labour practices, as alleged. So considering all the facts the present complaint may be dismissed with costs.

4. On the pleadings and the documents of both parties, the Issues are frame a at Exh. O-11 and I have recorded my findings thereon for the reasons stated below :—

Issues	*Findings*
(1) Whether the Complainant has proved that the Respondents company has committed any unfair labour practices under items 5 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 ?	No.
(1-A) Whether the Complainant is a workmen within the meaning of the definition of a "workmen" under the Industrial Dispute Act, 1947 ?	No.
(2) Whether the Complainant is entitled to get any reliefs as prayed for in the main complaint ?	No.
(3) What order ?	As per the final order below.

Reasons

5. The Complainant has examined himself only at Exh. U-11. On the other hand the Respondent company has examined its 2 witnesses viz. (1) Mr. Ramesh A Pathak as CW-1 and (2) Mr. Mohan Narayan Shete as CW-2 at Exh. C-39. Besides the oral evidence, both parties have relied on the documentary evidence, which can be discussed at the proper places hereinafter.

6. The Complainant has come with the case that lastly, he was working as a Foreman. But the evidence of Mr. R. A. Pathak (CW-1) shows that lastly, the Complainant was working as a Production Officer in the Respondent company. The letter of the said promotion was issued by the Respondent company and he was promoted as the Production Officer in grade A-6. On this points, the Complainant was cross-examined and he has denied that he was the Production Officer at the time of his retirement in the year 1994. However, he has admitted that he was given the increment of Production Officer in grade A-6. Further, he has stated that he does not remember as to whether he was promoted to the post of the Production Officer in grade A-6. From the above evidence, it appears that the Complainant has firstly denied that he was the Production Officer at the time of the retirement. Later on, he has stated that he does not remember as to whether he was promoted to that post. However he is admitting that he was given the increment of the grade A-6. Therefore, it appears that the Complainant was lastly working as the Production Officer. It is also to be noted that the Respondent company has produced the promotion letter and also the salary statement (Exhs C-36 and C-20). Both documents show that the Complainant was working as the Production Officer at the time of his retirement.

7. The Complainant has also admitted in his evidence that after the Junior Foreman and Senior Foremen the promotion of Officer in grade A-7 is given. From this fact it appears that after the promotion of foreman the Complainant was given the grade A-7 and then grade A-6 of the Production Officer. It also appears that the Officer in grade A-7 Foremen etc., were working under him.

8. So far as the duties of the Complainant as the Production Officer in grade A-6 is concerned, the evidence of the CW-1 Mr. R.A. Pathak shows that the Complainant was working as the Production Officer in grade A-6 in the Heel Press Department, where 89 workmen were working under him (Complainant). These employees included 2 Officers in grade A-7 and A-8, 2 Foremen, 3 Supervisors and 82 workmen. The Complainant being the Production Officer was reporting to the Production Manager and the Deputy Production Manager. Two Officers viz. the Production Officers and Asst. Production Officer were reporting to the Complainant and 2 Foremen were reporting to the Production Officer and Asst. Production Officer. The supervisors were reporting to the Foremen and 82 workmen were reporting to the supervisors, as given in the chart alongwith the list Exh. C-4. Further his evidence shows that the Complainant being the Production Officer was responsible for maintaining the production target, maintaining discipline in the department, sanctioning leaves of his subordinates, recommending promotions of his subordinates, transferring workmen from one department to another department for the purpose of better utilisation of the man power etc. Thus from the evidence of this witness CW-1, it appears that the Complainant being the Production Officer was exercising managerial and supervisory duties and about 89 workmen, including the Production Officer in grade A-7, the Asst. Production Officer, supervisors etc, were working under him. During the cross-examination, this witness CW-1 has stated that there is no evidence, except the chart filed alongwith the list Exh. C-4 to show that 2 Officers, 2 Foremen, 3 Supervisors and 82 workmen were working under the Complainant. But, there is documentary evidence to show that the Complainant had issued the chargesheets, took disciplinary actions, recommended for promotions and given instructions of work to the workmen. Further, he has stated that he does not know as to whether all this documentary evidence is produced by his company or not. He has further stated that there is a documentary evidence to show that the Complainant was reporting to the Deputy Production Officer Mr. Tapan Kumar at the time of his retirement. But he has not seen personally any such report. Thus, this witness does not know as to whether the Respondent company has produced all the documentary evidence showing the status of the Complainant.

9. The Complainant has only stated in his examination in chief that no workmen was working under his and he had no power to take any disciplinary action against any of the employees as he was a workmen. He could not give the particulars of his duties in his examination in chief. He was cross-examined at length on this point and he has admitted several things about his duties viz. (1) he was reporting work to the Production Manager after he was given increment of Production Officer in grade A-6; (2) he was recommending promotions and increments of the workmen in his department as per directions of the Production Managers; (3) he was making reports of misbehaviour or misconduct of negligence of the workmen in his department to the Production Manager; (4) he was sending such reports with his signatures; (5) he was sanctioning leaves of the workmen on the recommendation of the Foremen; (6) he was giving work to the senior foremen, to the junior foremen in case of absence or leave vacancy of the senior foreman; (7) he was sending letters as the departmental head; (8) he deputed senior foreman Mr. Mendis to act in his (Complainant) place, during his leave period, (9) he recommended the leave and sent application of the senior foreman Mr. Mendis for necessary orders. Further, he has admitted that his salary was in between Rs. 4000/- and Rs. 5000/- per month at the time of his retirement. The reports of increments at Exhs. C-23 to C-27, the reports about misconduct/misbehaviour/negligence of the employees Exhs. C-28 and C-29; shift reports Exh. C-30 and C-31, the letter dated 10th October, 1987 and 6th July, 1986 Exh. C-32 and C-33 etc. also show the same. From the admitted facts, it appears that the duties of the Complainant are of supervisory and managerial in nature. Besides the duties admitted by him he could not give his duty. He has only given his duties when the joined the Respondent company and when he was working as daily rated employee. But he could not give his duties after his promotion as the Production Officer.

10. The learned Advocate for the Respondents has submitted that the Complainant was no a "workmen" within the meaning of the definition and therefore, this Court has no jurisdiction to entertain the present complaint. In support of his submission, he has relied on 2 case, viz. Shrikant Vishnu Palwankar *Vs.* Presiding Officer, First Labour Court, reported in *1992 I CLR 184 (Bom.)* and (2) S. K. Maini *V/s.* Carona Sahu Co. Ltd. reported in *1994 (85) FJR 01 (SC).* In the former case the Petitioner was confirmed in the job department of the Respondent No. 2 newspaper. He was assigned the duty of checking of lost materials received from other departments. Besides the said duty his other duties, were of supervisory in nature. He was also drawing salary exceeding Rs. 500 per month. On the facts, the question arose as to whether the Petitioner was a workmen. Considering the facts, Their Lordships have held that the Petitioner was not a workmen within the meaning of section 2(a) of the I. D. Act. The learned Advocate for the Respondents has mainly relied on para No. 6 onwards in the said judgment, which shows that in the said case the Petitioners being a foreman was required to assign work to 2 workmen and to supervise the work of 6 to 8 workmen. It was his job to recommend whether the workmen could be spared or granted leave. It was also come in the evidence that he was required to indent materials required by different operators working under his and he was vested with the power to make work appraisal of the workmen working under his for determining for their suitability for promotion. He has also admitted that it was his job to take a round in the department and supervise the working of the operators. He was required to do various jobs like assignment of work, allocation of jobs, indenting of materials required for each department recommendation of leave and work of appraisal of the workmen working under him. On considering these duties. Their Lordships have held that it cannot be accepted that the Petitioner was employed viz. in the capacity of and technical work and incidently was doing supervisory duty. In the later case, it is also held that the designation of the employee is not of much importance the nature of duties of the employee is important. The determinative factor is main duty of the employee concerned and not some work incidently done if the employee is mainly doing the supervisory work but incidently or for fraction of time does some manual or clerical work the employee should be held to be doing the supervisory work. It is further held that the main work is of manual, clerical or technical the mere fact that some supervisory or other work is also done by the employees incidently or only a small time fraction of working time is divested to some supervisory work the employee will come within the preview of the workmen as defined under section 2(*j*) of the I.D. Act. In the present case, the Complainant has not given his duties after he was promoted as the Production Officer. But he has admitted several things, as given above. From these admitted facts, it appear that the main duty of the present Complainant is of supervisory and managerial in nature. Therefore, in view of the observations in the above decisions the present Complainant cannot be said to be a "workmen" as defined under section 2(s) of the Industrial Disputes Act.

11. On the point of the birth date the learned Advocate for the Respondents company has relied on several decisions. First is between Hindustan Lever Ltd. and S. M. Jadhav reported in *2001 II CLR 182 SC.* Wherein, Their Lordships have held that it is well settled law that at the fag end of the services, I party cannot be allowed to raise a dispute regarding his birth date. The second case is between Maharashtra State Road Transport Corporation Yashwant Shreedhar Phadake reported in *2000 (IV) LLN 158 Bom.* In the said case the Corporation acted upon the school leaving certificate, which was furnished by the employees at the time of joining the service. Then, at the fag end of his service, he sought to change his date of birth but the Corporation did not allow the same. On the facts, Their Lordships have held that the act on the part of the Corporation cannot be termed as unfair labour practice. Third case is between Union of India and Devichandra Sharma reported in *1990 LAB IC 750 P and H.* In the said case the employee has declared his date of birth as 1st April 1933. Later on *i. e.* at the fag end of his service, he claimed his date of birth as 1st April 1937. If his date of birth as 1st April 1937 would have accepted as the correct birth date, he would not have been taken in the Complainant of the company as he was under age and that would have been prevented him from entering into the service. On the facts, Their Lordships estopped from claiming 1st April 1937 as his date of birth. Further, Their Lordships have held that he cannot take advantage of his own

wrong twice. Besides the above cases the learned Advocate for the Respondents has also relied on the decisions of which copies were produced at the time of deciding the application for *interim reliefs*. In the case of K. Rajandranath *V/s.* Deputy Commissioner of Police Calcutta, reported in *1990 LAB IC 1598 Calcutta.* It is also observed the same as observed above in the case of Union of India *Vs.* Devichandas Sharma (supra). The other case relied on is between N. Narayan Reddy *V/s.* Executive Officer, TT Tirupati, reported in *1994 I CLR 1007 (AP).* Wherein, the employee furnished his date of birth at the time of joining his service in the year 1959. Thereafter, he remained silent for more than 30 years regarding his date of birth. Then in the year 1992, he initiated proceedings for change of date of his birth with a view to get his service extended. On he facts, Their Lordships have held that such employee is estopped from denying his date of birth furnished at the time of joining the service. In the light of the above observations the facts of the present case can be examined.

12. It appears from the evidence of the Complainant that he firstly issued the letter dated 27th April 1993 accompanied by his school leaving certificate to the Respondent company. Then, he sent letter dated 1st June 1994 to the Respondent company. The said letter was accompanied by he affidavit. He issued both these letters to gat his birth date correct. So far as the first letter is concerned the Respondent company's witness CW-1 Mr. R. A. Pathak has admitted the receipt of the said first letter. But he denied that the second letter was received by his company. On this point, he has stated that the present Complainant being an officer put the rubber stamp of the company on the copy of the said application, as the Complainant was allowed to put such stamp on the letters. Even if it is presumed that the Respondent company received both these letters sent by the Complainant it appears that the Complainant joined the Respondent company in the year 1956 and he firstly made representation by a issuing the letter dated 27th April 1993 *i.e.* after 37 years after joining his service in the Respondent company.

13. The evidence of the Respondent company's witness CW-1 Mr. R. A. Pathak shows that the salary certificate/slip Exhs. C-16 to C-20 issued to the Complainant bear the birth year. On this point, the Complainant has admitted that these pay slips are copies of his pay slips. Further, he has admitted that he received the certificate Exh. C-21 dated 20th March 1987 required for the LIC purpose. On perusal of the said pay slip and the certificates (Exh. C-16 to C-21), it appears that there is a mentioning about the birth year of the Complainant and all were received by the Complainant. There documents are for the years 1987, 1989, 1991 and 1994. If it is so, it appears that the Complainant was aware much prior to his representation that his birth year was recorded as 1956, but he failed to make any representation in the year 1987. It is also to be noted that the Complainant has admitted in his evidence that the school leaving certificate was received by him from the school authorities before he joined the Respondent company. Further, he has admitted that the school leaving certificate was with him. It shows that the birth date was within his knowledge at the time of his joining but he concealed the same. Even he did not get his birth date corrected within reasonable time after joining the Respondent company.

14. The Complainant has come with the case that his birth date as per the school leaving certificate is 28th September 1939. Admittedly, he joined the Respondent company on 20th September 1956. He has also admitted that for the recruitment it was necessary to complete 18 years of age to join the Respondent company. If we consider all the facts, it appears that the Complainant had not completed 18 years of his age at the time of joining the Respondent company. So also, it appears that the Complainant concealed his birth date with a view to get employment in the Respondent company. Thus, he had taken disadvantage by concealing his true birth date. Therefore, he cannot take advantage of his own wrong twicely at the fag end of his service, in view of the observations of the Supreme Court and other High Courts (supra).

15. From the above discussions, it appears that the Complainant was lastly working as the Production Officer in grade-6 and was looking after the administrative/managerial and supervisory work. The Complainant has also admitted that after the promotion and increment, he came out of the ESI scheme. HE has stated many things about his union activities, but he could not produce any documentary evidence to show that he was the member of the said

union, when he was in the Officer's grade. It is also material to note that he has specifically admitted that his union activity has no concern with his retirement. The Complainant has admitted many things that one Shri Subhanrao Salunkhe was promoted as Officer and then the Quality Control Manager and then retired at the age of 58 years. Further, he has admitted that Shri K. S. Kulkarni R & D Manager (Chemist) was also retired at the age of 58 years. Further he has admitted that all the officers above grade-7 were retired at the age of 58 years. He has also admitted that he has also been retired at the age of 58 years on the basis of his birth year recorded in the company's records. All these facts show that the officers were retired at the age of 58 years. If it is so, it appears that the Complainant being in the officer grade-6 is also rightly retired by the Respondent company at the age of 58 years by considering the birth year as recorded in the company's records.

16. The present complaint is brought under items 5 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, From the above discussions in the aforesaid paras, it does not appeal that the Respondents have shown any favouritism or partiality or they have failed to implement any award, settlement or agreement. The present Complainant is also not a "workmen" within the meaning of the definition under the Industrial Disputes Act. Therefore, it does not appear that the Respondent company has indulged in any unfair labour practices, as alleged. In the result, the Issue No. (1) and 1-A are decided in the negative.

17. In view of my findings on the Issue No. (1) and 1-A the Complainant is not entitled to any reliefs, In result the Issue No. (2) is also decided in the negative.

18. With this, I proceed to pass the following order :—

Order

Complaint (ULP) No. 1355 of 1994 is hereby dismissed with no order as to costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 30th August 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 11th September 2002.

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BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR.

REVISION APPLICATION (ULP) No. 253 OF 1997.—Ashok Bapu Suryawanshi, At Post Ankali, Tal. Miraj, District Sangli.—*Petitioner.*—*Versus*—Divisional Traffic Superintendent, (Default), Maharashtra State Road, Transport Corporation, Sangli Division, Sangli—*Respondent.*

In the matter of Revision Application under section 44 of the M.R.T.U. and P.U.L.P. Act.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri D. M. Patil, Advocate for the Petitioner.
Shri A. N. Kulkarni, Law Officer for Respondent.

Judgment

1. This is a revision by Original Complainant a conductor challenging legality of judgment and order passed in Complaint (ULP) No. 187 of 1990 by learned Labour Court, Sangli, whereby relief of reinstatement with continuity of service and full back wages is refused by dismissing his complaint.

2. Admittedly present Petitioner (hereinafter referred to as the Complainant) was working as a Conductor with present Respondent (hereinafter referred to as the State Road Transport). The Corporation served chargesheet dated 5th March 1987 upon him alleging misconduct under clauses 9, 10, 12(b), 22, 25 and 35(b) of its Discipline and Appeal Procedure. He denied the charges and then enquiry took place. Ultimately he was dismissed by order dated 20th September 1989.

3. Above complaint was filed on 24th April 1990 alleging that a false chargesheet was served upon the Complainant. In fact, he has not committed any misconduct. Besides, findings of the enquiry officer are perverse. He further alleged that his termination is an unfair labour practice under item 1(a), (b), (d), (f) and (g) of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

4. The Corporation has filed its say cum written statement at Exh. C-7 and traversed all material allegations made by the Complainant. It contended that Complainant's ticket tray and way-bill was checked and then the report was made to higher authorities. Misconducts noticed were grave and serious and hence a chargesheet was served upon the Complainant. Enquiry is fair and proper and findings are not perverse. Proved misconducts were grant and hence punishment of dismissal is proper. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

5. The Corporation made an application (Exh. U-2) under section 30(2) of the M.R.T.U. and P.U.L.P. Act, alongwith the complaint whereby the Corporation was directed to allow him to join duties until further orders with show cause notice. But it was not finally decided.

6. Learned Labour Court than framed issued at Exh. O-3 on 5th December 1990. It appears from the record that issues were again framed on 22nd July 1994. Then the matter came to be adjourned for various reasons. It was then kept for hearing on 7th July 1997. Advocate representing the Complainant then filed "no instruction pursis" (Exh. U-8) on 7th July 1997. Corporation's Law Officer then submitted on same day that the complaint be dismissed for default or he may be heard if it is going to be decided on merits. Learned Labour Court then proceeded to dispose of the complaint on merits and dismissed the same by judgment and order dated 10th July 1997. The same is challenged in this revision.

7. I heard both sides. Considering rival submissions, following points arise for my determination :—

(*i*) Whether learned Labour Court was justified in deciding the complaint on merits, in absence of the Complainant and without hearing him ?

(*ii*) What order ?

8. My findings on above points are as under :—

(*i*) No.

(*ii*) The Revision Application is partly allowed.

Reasons

9. On perusal of record and proceeding, I find that there is nothing on record to show that Complainant's then Advocate informed the Complainant about the date of hearing prior to filing 'no instruction pursis'.

10. Shri D. M. Patil, learned Advocate representing the Complainant submitted that the learned Labour Court ought to have issued notice to the Complainant on filing of "no instruction pursis" (Exh. U-8). The Complainant was under *bonafide* impression that his Advocate will inform him about the date, need about his appearance and leading oral evidence, if necessary. But the learned labour Court proceeded further in absence of the Complainant, decide the complaint hurriedly and that too on me its. Finally, he submitted that the Complainant be extended reasonable opportunity to put his case no merits. He further added that the Corporation will not be prejudiced if the complaint is decided afresh on merits.

11. Shri Kulkarni, Law Officer for the Corporation replied that the Complainant has to suffer for his negligence and now cannot *malafidely* blame his advocate.

12. One of the object to in act the M.R.T.U. and P.U.L.P. Act is to define and prevention of certain unfair labour practice. As such approach of the Court must be always justice oriented. Besides, it is always better to decide any controversy on merits rather than on technicalities to do substantial justice.

13. In the present case, Complainant's advocate filed 'no instruction pursis' at Exh. U-8 on 7th July 1997. It does not state that he has informed the Complainant and Complainant has not met him. In any case it was obligatory for learned labour Court to issue a notice to the Complainant before proceeding further and then to decide or dispose of the complaint according to provisions of law. But it appears that he did not resort to such mode and disposed of the complaint on merits hurridly. Considering peculiar facts and circumstances of this case, in my judgement, learned Labour Court was not justified in deciding the complaint on merits. It ought to have issued notice to Complainant before proceeding further. As such, impugned decision needs t be set-aside by directing fresh trial. Accordingly, I answer point No. 1 in the negative and pass following order :—

Order

(i) The Revision application is partly allowed.

(ii) Impugned judgment and order dismissing the complaint is set-aside.

(iii) The complaint is remanded to Labour Court for trial afresh. The Labour Court is directed to decide the complaint after extending reasonable opportunity of being heard to both parties.

(iv) R & P be sent forth with to Labour Court, Sangli and the parties shall appear there on 16th August, 2002

(v) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated 3rd July 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR.

APPEAL (IC) No. 5 and 6 OF 1996.—The Kolhapur Maratha Co-op. Bank Ltd. 2127, Bhausingji Road, Kolhapur, through its Manager.—*Appellant. (*Respondent in Appeal (IC) No. 6 of 1996).—*Versus*—Shri Balkrishna Sakharam Shinde, At 520/7, E Ward, New Shahupuri, Kolhapur.—*Respondent* (Appellant in Appeal (IC) No. 6 of 1996).

In the matter of Appeals under section 84 of the Bombay Industrial Relation Act, 1946.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri A. D. Kuigade, Advocate for the Appellant.
Shri D. M. Patil, Advocate for the Respondent.

Judgement

These Appeals are arising out of judgment and order passed in Application (BIR) No. 6 of 1987 by Labour Court, Kolhapur, whereby an employer is directed to reinstate its employee on his previous post with continuity of service and 25% back wages.

2. Appeal (IC) No. 5 of 1996 is preferred by employer (hereinafter referred to as the Bank) challenging the entire decision, whereas Appeal (IC) No. 6 of 1996 by the employee (hereinafter referred to as the Applicant) challenging the decision to the extent of refusal of 75% back wages.

3. Admittedly the Bank is registered under the provisions of Maharashtra Co-operative Societies Act, 1960 and government by provisions of the Bombay Industrial Relations Act, 1946. The Applicant was initially employed on probation and then was confirmed at the post of Junior Clerk. He was on duty on 7th February 1986 on Bank's New Shahupuri Branch. A person namely Shri B. N. Bandi, claiming himself to be to a holder of Saving Bank Account, approached the Applicant and sought to withdraw some amount from his Bank Account.

4. It is case of the Applicant that Shri Bandi visited the Branch after closure of business hours of the Branch. He (Applicant) politely refused to oblige him for want of pass-book as well as Bank Account number. Besides, Shri Bandi was not a regular customer and hence he was not in a position to identify him. Shri Bandi then approached Senior Clerk Shri Bhosale and Shri Bhosale then directed him to locate the Account number and permit withdrawal of the amount. It is alleged that business hours of the Branch were already closed at that time. The Applicant was shocked by such illegal and unwarranted directions of the Senior Clerk and hence declined to oblige Shri Bandi. The senior clerk then asked another Clerk to locate Account Number of Shri Bandi and permit the withdrawal. Another clerk then permitted the withdrawal.

5. It has come on the record that Shri Bandi then made complaint to Chairman of the Bank regarding the incident whereupon Applicant's explanation was called for. The Applicant gave explanation dated 7th March 1986 that Shri Bandi came after closure of business hours, he was unable to entertain him for want of details and was never arrogant to Shri Bhosale Senior Clerk. Another Clerk Shri Nimbalkar then pointed out the ledger having account of Shri Bandi and then he (Applicant) debited Shri Bandi's general cheque to his account. He explained that he has not committed any misconduct. In addition, he applogised for the mistake, if any.

6. The Bank then suspended the Applicant by order dated 11th March 1986 pending the enquiry and served a chargesheet dated 8th May 1986 upon him. Ultimately the Bank discharged him by order dated 1st April 1987 by way of punishment. The Applicant then gave approach notice to the Bank and then filed the impugned application.

7. It is alleged by the Applicant that he was paid 50% wages as subsistance allowance through out the period of suspension which severely affected his subsistances and impaired his capacity to defend in the enquiry. He requested, after conclusion of the enquiry, to furnish copy of enquiry report but the same was not delivered and punishment was directly awarded. It is further alleged that alleged misconducts for which he is punished do not constitute a misconduct under Model Standing Orders framed under the Industrial Employment Standing Orders Act. Principles of natural justice were not followed in the enquiry and he was not paid subsistance allowance. Punishment imposed is improper, illegal and unjust. In fact, he has not committed any misconduct but adhered to rules and procedure of the Bank while entertaining Shri Bandi. Besides, punishment is shockingly disproportionate. His unblemished past record is altogether ignored. The Bank was not deligent in completing the enquiry, within 6 months and took more than 13 months. Such un-explained and unwarranted delay vitiates the action as per provisions of section 78 (1) (d) (i) of the B.I.R. Act. Finally, the Applicant prayed for reinstatement, continuity of service and full back wages with other consequential reliefs.

8. The Bank filed its written statement at Exh. C-17 and traversed all material allegations made by the Complainant. It contended that Shri Bandi came during the business hours but the Applicant behaved redely with him. The Applicant declined to pay amount to Shri Bandi and hence approached to Shri Bhosale Senior Clerk. Shri Bhosale directed the Applicant to locate Shri Bandi's account number and permit the withdrawal. Such directions were reasonable and lawful. Applicant's such conduct was contrary to rules, procedure and practice. Eventually, he was spended pending the enquiry. Proper opportunity was given to the Applicant to defend himself in the enquiry. Proper subsistence allowance was paid. Alleged misconducts are covered by the Model Standing Orders. The Enquiry Officer found the Applicant guilty of three misconducts. The punishment imposed is not disproportionate but proportionate one. Finally, the Bank prayed for dismissal of the application.

9. The Applicant, alongwith the application, filed an application under section 119(D) of the BIR Act, for payment of due subsistance allowance. After hearing both parties, the Labour Court directed the Bank to pay requisite subsistence allowance *vide* order dated 18th May 1987.

10. The Labour Court framed issues at Exh. O-18 and the parties what to the trial. The Applicant admitted legality of the enquiry. He produced suspension order, chargesheet, explanation to the chargesheet, application dated 21st June 1986 and 25th March 1987, discharge order, approach notice dated 8th April 1987 and its acknowledgment, with list Exh. U-4. The Bank produced entire enquiry papers, previous correspondence, report of the Enquiry Officer and punishment order. The Applicant examined himself at Exh. 36. No oral evidence was adduced by the Bank. Learned Labour Court, on perusal of evidence and hearing both parties, held that findings of the Enquiry Officer are legal and proper, non-payment of subsistence allowance does not vitiate the action and the punishment is not hit by section 78(1)(d) (i) of the BIR Act. It then held that punishment is grossly disproportionate, amounts to victimisation and the termination is illegal. Ultimately, it allowed the application directing reinstatement with continuity of service and 25% back wages, by judgment and order dated 10th July, 1996. The same is challenged in these appeals.

11. I heard both Advocates at length. Considering rival submissions, following points arise for my determination .—

(i) Whether impugned finding that findings of Enquiry Officer are justifiable is legal and proper ?

(ii) Whether punishment imposed, is legal and proper ?

(iii) If finding of point No. 2 is in the negative, to what relief the Applicant is entitled to ?

(iv) Whether impugned judgment and order calls for interference ?

(v) What order ?

8. My findings on above points are as under :—

(i) Yes.

(ii) No.

(iii) Reinstatement with continuity of service.

(iv) Yes, to the extent of setting aside granting 25% back wages.

(v) Appeal (IC) No. 5/1996 is partly allowed and Appeal (IC) No. 6/96 is dismissed.

Reasons

13. It needs to be stated at the outset that the Applicant submitted before Labour Court, *vide* pursis Exh. 79 that he is not disputing the domestic enquiry as far as procedural requirements are concerned. As such, it is not necessary to go into procedural aspect of the domestic enquiry.

14. The Enquiry Officer has framed 8 issues, while submitting his report. He has held that charges viz. dis-obedience of lawful and reasonable orders of the superior, failure to perform duty properly and indiscipline, are proved. He has also held that other four charges are not proved. It is not necessary to state the charges which are not proved.

15. According to the Enquiry Officer, direction of Senior Clerk Shri Bhosale to locate Account number was lawful and reasonable order, it was not obeyed by the Applicant and hence is guilty of dis-obedience of lawful orders of the superior. He has further observed that it amounts to failure to perform duty properly and hence such charge is proved. He has further observed that failure to obey order of superior Shri Bhosale affected the discipline of the Bank and hence charge of indiscipline is proved. In short, failure to locate Account Number of Shri Bandi despite direction of Shri Bhosale is the factual misconduct.

16. Shri Patil, learned Advocate representating the Applicant argued firesly that Shri Bandi visited the Branch after closure of business hours and hence the Applicant was unable to entertain him. The Applicant is expected to be careful and caution and follow bank's rules. Entertaining Shri Bandi after closure of business hours would have been contrary to the rules. In addition, the incident is cooked one, as complaint of Shri Bandi, though bears date as 7th February 1986, endorshment thereof is of 4th March 1986 regarding its receipt.

17. Shri Kuigade, learned Advocate representating the Bank replied that Shri Bandi had been to the Branch before time and accordingly, it is stated by Shri Bhosale in his examination-in-chief, before the Enquiry Officer. It is own case of the Applicant that he refused to entertain Shri Bandi. Complaint of Shri Bandi bears the date as 7th February 1986 and therefore, plea of collecting the same is after though.

18. On perusal of enquiry papers I find that senior clerk Shri Bhosale, has stated in the enquiry that Shri Bandi came in Bank prior to closing of business hours of the Bank. He categorically denied in the cross-examination that Shri Bandi visited the Bank at 3.20 p.m., but has explained that Shri Bandi visited between 2.30 p.m. to 2.45 p.m. Consequently, it cannot be accepted that Shri Bandi visited the Bank after closing of the business hours. On the contrary, the evidence and inference is otherwise.

19. Advocate Shri Patil, then argued that Shri Bandi had no pass-book with him. Bank's all employees must be careful and especially when the amounts are withdrawn by the customers. The Enquiry Officer has observed while discussing charge of rude and arrogant behaviour that Shri Bhosale is an interested witness and said charge is not proved. Eventualy, his interested version ought not have been believed by the Enquiry Officer. He then took me through cross-examination of Shri Bhosale and he submitted that Shri Bhosale has admitted that pass book must be presented while withdrawing the amount and demand of the pass book by he Bank employee is appropriate. Besides, refusal of Bank Clerk to accept withdrawal slip without pass book, is not contrary to rules. Likewise, seniors should give directions are per rules of the bank

to its employee. He then submitted that Shri Bandi had no pass book and Cheque book and hence the Applicant was right in declining to entertain him. He also pointed out Shri Bhosale's answer to question No. 150 that conduct of Shri Bhosale in declining to accept withdrawal slip for want of Account number is not totally correct but correct to some extent. He then submitted that directions of Shri Bhosale cannot be said to be legal one. Even then, the Enquiry Officer found the Applicant guilty. As such, finding of the Enquiry Officer are perverse one.

20. Advocate Shri Kuigade replied that Senior Clerk directed the Applicant to locate account number of Shri Bandi but the Applicant flately refused. Another Clerk Shri Nimbalkar then located the number, there was no other customer at the counter and hence the Applicant was under legal obligation to obey reasonable and proper order of Sr. Clerk Shri Bhosale. Applicant's refusal to obey such reasonable and legal directions is clearly dis-obedience, failure to perform duties proper as well as indiscipline. As such, the findings cannot be said to be perverse.

21. Learned Labour Court has observed on page 15 of impugned judgment that charge of causing harm to the prestige of the bank is proved against the Applicant. However, in my judgment, such observations do not stand to reason as the same are contrary to findings of the Enquiry Officer. Same is the case regarding observations that the Applicant behaved in rude and arrogant manner towards Shri Bhosale and Shri Bandi. Learned Labour Court was not empowered to travel beyond findings of the Enquiry Officer regarding the charges which are not proved in the enquiry.

22. Now, turning towards failure of the Applicant to locate Account number of Shri Bandi despite direction of Shri Bhosale, in my judgment such directions were reasonable one. When Shri Bhosale decided to accommodate Shri Bandi despite non-presentation of pass book or cheque, it was obligation of the Applicant to locate the account number as directed by Shri Bhosale. As stated above, factural misconduct is failure of the Applicant to locate the Account Number despite direction of Shri Bhosale. In my judgement, such was the reasonable direction of Shri Bhosale. However the Applicant dis-obeyed the same. It logically amounts to indiscipline and failure to preform duty properly. Consequently, it cannot be accepted that findings of the Enquiry Officer are perverse. On the contrary, those are based on sound reasoning and are well justifiable. Accordingly, I answer point No. 1 in the affirmative.

23. Advocate Shri Patil argued in the second phase, that powers of the Labour Court under sections 78 and 79 of the B.I.R. Act are restricted to examine the legality or propriety of the punishment which, in turn is possible only in the nature of gravity of the misconduct and various punishments specified in the relevant standing order. For that and he relied on the decision in *Mohan Nikam* Vs. *National Textile Corporation Ltd. reported in 1994 I CLR at page 761 (Bom. H. C.)* He further added that Model Standing Orders for Banking Industry which are applicable to the Bank provide for certain punishments and one of the mandate while imposing punishment is consideration of past record. Applicant's past record is totally clean. Nothing is brought on record by the Bank to show that his past record is bad or stigmatic. As such, punishment imposed is shockingly disproportionate. At the most, a warning would have been sufficient. In fact, the Applicant was unable to entertain Shri Bandi for want of pass book, cheque book or Account number. In such circumstances, punishment imposed does not stand to reason, is shockingly disproportionate and amounts to victimisation.

24. Advocate Shri Kuigade countered above arguments and replied that refusal to do the work is a serious misconduct and hence dismissal was well justifiable. Even then lesser punishment of discharge is imposed. In support of his arguments he relied on the decision between *Y. Rajan* Vs. *Indian National Press (Bombay) Ltd. reported in 2002 I CLR at page 1057.*

25. Advocate Shri Patil explained by way of re-joinder that there was stigmatic past record in Y. Rajan's case. It is stated in the punishment order that past record is considered. However, no past stigmatic record is produced before the Court nor such is the case of the Bank. Extreme punishment is imposed for a paltry misconduct.

26. I am respectfully bound by the observations in Y. Rajan's case, referred above. In that case, stigmatic past record of the Applicant was considered and it was held that refusal to do work is a serious misconduct. In the present case, there is nothing on record to show that Applicant's past record is a misconduct. No evidence is adduced by the Bank in that behalf, Eventually it has to be held that Applicant's past record is not bad or stigmatic. As such, decision in Y. Rajan's case is of no help to the Bank.

27. It is not necessary to reproduce material circumstances, whereby the Applicant declined to entertain customer Shri Bandi. Considering proved circumstances, in my judgment the misconduct cannot be said to be proportionate one. Admittedly, charges of causing inconvenience while rendering service to Shri Bandi, rude and arrogant behaviour towards Shri Bhosale and causing harm to prestige of the Bank, are not proved against the Applicant. Likewise, charge of remaining absent without sanction of leave, is also not proved. I, therefore find that learned Labour Court has rightly held that the punishment imposed is legal victimisation and is grossly disproportionate. Accordingly, I answer point No. 2 in the negative.

28. Learned Labour Court has observed that punishment of depriving 75% back wages is required under the law so as to maintain discipline in the Bank. It further observed that the Applicant behaved improperly with the customer which has adversely affected the prestige and reputation of the Bank. In my judgment, later observations of learned Labour Court are unsustainable as charges to that effect are held to be not proved by the Enquiry Officer.

29. Advocate Shri Patil again took me through observations in the decision between *Mohan Nikam* Vs. *National Textile Corporation Ltd. reported in 1994 I CLR at page 761* and reiterated that Labour Court while exercising jurisdiction under B.I.R. Act, has no power to impose penalty of denial of back wages as the same is not prescribed by the Model Standing Orders. The power is limited to determine as to which of the punishments specified in the Standing Order would be the proper punishment. He then submitted that the Applicant be awarded 100% back wages by imposing minor penalty under the standing order. In support of his arguments he relied on decision in *Brihan Mumbai Municipal Corporation* Vs. *Mohanrao B. Shinde reported in 2002 (94) FLR at age 241).* He further explained that the Applicant was driving a taxi for his livelihood and the same cannot be held to be gainful employment. In support of his such proposition he relied upon decision in *Chandrakant M. Siresekar* Vs. *Jayesh Engineering and others* reported in 1997 II CLR at page 342, *State of Madhya Pradesh and others* Vs. *Chhote Minya and others reported in 1997 II CLR at page 236.* and *Metro Tyres Ltd.* Vs. *Presiding Officer, Labour Court, Ludhiana and others reported in 1997 II CLR* at page 1201.

30. Advocate Shri Kuigade, replied that the Applicant himself has deposed that he was getting monthly income of Rs. 2000 to Rs. 2500 from his taxi business and cleared loan of Rs. 30,000 obtained for purchasing a taxi-car. As such, he was certainly gainfully employed and was not entitled to any back wages.

31. Learned Labour Court has observed that Applicant purchased a taxi-car in the name of his wife and, therefore, income derived from such taxi business cannot be treated as gainful employment.

32. I am respectfully bound by the observation in decisions relied by Advocate Shri Patil. It has come in Applicant's evidence that he took loan of Rs. 30,000 purchased a second hand taxi-car in his wife's name and was earning Rs. 2000 to Rs. 2500 per month. His father-in-law also supported him financially and then he cleared entire loan of the Bank. In my judgment it

is difficult to accept that he was simply earning but it amounts to gainful employment. As such, learned Labour Court exercised powers like provided under section 11-A of the I. D. Act. Legally, it was a point of limited jurisdiction under sections 78 and 79 of the B.I.R. Act. Eventually, its finding of granting 25% back wages is liable to be set-aside.

33. Now, a question arises as to what relief the Applicant is entitled to ? As held, while answering point No. 2, the punishment imposed is shockingly disproportionate and neither legal nor proper. As a legal consequence, therefore, learned Labour Court ought to have imposed minor penalty under Model Standing Orders. In my judgment, a letter of warning to the Applicant is sufficient. I am respectfully bound by the decision in *Brihan Mumbai Municipal Corporation* Vs. *Mohanrao Shinde reported in 2002 (94) FLR at page 241.* It is held by his Lordship that delinquent employee is entitled to full wages when order of punishment is found to be shockingly disproportionate. However, in the present case the Applicant was gainfully employed and hence is not entitled to back wages. Punishment of waring is proportionate and he is entitled of setting aside order of granting 25% back wages is necessary. I answer point Nos. 3 and 4 accordingly.

34. To summarise, finding of the Enquiry Officer are well justifiable. Punishment imposed is shockingly disproportionate, neither legal nor proper. The Applicant was gainfully employed and hence is not entitled to back wages. Refusal of back wages is not by way of punishment but due to his gainful employment. He is entitled to reinstatement with continuity of service. As regards, punishment to the Applicant the Bank is directed to issue a letter of warning to him and entry thereof be taken in his service record. Punishment of refusal of 75% back wages is contrary to powers under sections 78 and 79 of the B.I.R. Act and is required to be set-aside. Eventually, Bank's appeal needs to be allowed partly and employee appeal needs to be dismissed.

35. Finally, I pass following order :—

Order

(i) Appeal (IC) No. 5 of 1996 is partly allowed.

(ii) Impugned decision to the extent of granting 25% back wages is set-aside.

(iii) Impugned decision to the extent of granting of reinstatement with continuity of service is confirmed.

(iv) The Bank is directed to issue a letter of warning to the Applicant and entry thereof should be taken in his service record.

(v) Appeal (IC) No. 6 of 1996 is dismissed.

(vi) A copy of judgment be kept in other appeal.

(vii) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 23rd September 2002

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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IN THE INDUSTRIAL COURT OF MAHARASHTRA AT MUMBAI

BEFORE SHRI J. P. LIMAYE, MEMBER

COMPLAINT (ULP) No. 846 of 1996.—Madura Coats Employees' Union, Phoenix Mills Compound, 242, Senapati Bapat Marg, Lower Parel, Mumbai 400 013.—*Complainant.—Versus*— (1) Coasts Viyella India Ltd. Sanghavi Sadan, Off. Western Express Highway Near Jay Coach , P. O. Box No. 9100, Goregaon (East), Mumbai 400 063, (2) Mr. S. V. Pendharkar, Establishment in charge, Coasts Viyella India Ltd. Sanghavi Sadan, Near Western Express Highway, Goregaon (East), Mumbai 400 063.—*Respondents.*

In the matter of items 5 Schedule II and item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

PRESENT.—Shri J. P. Limaye, Member.

Appearances.—Shri V. A. Pai, Advocate for Complainant.
Shri M. S. Naik, Advocate for the Respondents.

Judgement

(Dated the 31st August 2002)

(Declared in open Court)

1. This is a complaint filed by the Complainant alleging an unfair labour practices under item 5 of Schedule II and item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act alongwith interim relief applications supported by affidavit and documents. It is a case of the Complainant that the Respondents have committed an unfair labour practices as alleged in the complaint on and from 9th August, 1999 and the brief facts regarding the said unfair labour practices narrated as below :—

It is submitted that the workers concern in the complaint were working with Respondent at their Consumer Thread Division stated at Goregaon. The Complainant union is functioning in the establishment of Respondent in Mumbai and same is recognised union under the provisions of M.R.T.U. and P.U.L.P. Act It is further submitted that *vide* letter dated 9th August 1996 the Respondent purported to terminate all the employees of the establishment at their Lower Parel establishment for the reasons that they have decided to permanently closed down the said establishment for cost effectiveness, better co-ordination and increased competitiveness. The copy of the said letter dated 6th August 1996 is enclosed herewith the present complaint. It is further stated that in the said letter *i. e.* colourable termination as in alternative it was directed that the workers concern to report for work at Goregaon. It is further stated that the establishment of Lower Parel, Mumbai by closing down the same entire staff therein offered employment *vide* letter dated 9th August 1996 at their Goregaon Premises and the workers who are working at Goregaon Premises are separate from Consumer Threat Division functioning at the same place. It is further stated that *vide* letter dated 12th August 1996 the union had directed its employees to report for duty at Goregaon as directed without prejudice to their right and contents, on and from 12th August 1996. The said letter is also enclosed herewith to the present complaint. It is further stated that the service conditions which are available and enjoyed by the employees employed at Lower Parel are different from the service conditions available to the employees employed at Goregaon. It is also stated that the Lower Parel employees are having 5 days in a week and Goregaon 6 days a week and there is an agreement arrived to this effect dated 22nd January 1980, the copy of the same is also filed alongwith the said complaint.

2. It is further stated that as the Complainant union is a recognised union in the establishment and it was obligatory on the part of the Respondent to discuss the issue regarding closing down the Lower Parel department and colourable termination of the employees to whom forcing to report at Goregaon which results in transferring the employees and subjecting them to different service conditions which amounts to change in service conditions. Hence

notice of change under section 9-A of Industrial Disputes Act is very much essential and on failure of the same it amounts to unfair labour practices under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Thus the basic issue raised by the Complainant by filing the present complaint that by asking the workers concern to report for duty from Lower Parel to Goregaon *vide* letter dated 9th August, 1996 which amounts to change in service conditions which is effected without any discussion with the Complainant union though it is a recognised union and also not issued a notice of change under section 9-A of the Industrial Disputes Act. Hence the said act of the Respondent amounts to unfair labour practices under item 5 of Schedule II and item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act and hence prayed the reliefs accordingly.

3. Thus after filing the present complaint supported by documents matter was proceeded further and notices were issued and Respondent have filed their detail say and W.S. below Exh. C-6 dated 16th October 1996. In the said W.S. Respondent have categorically denied the entire allegations and contentions raised by the Complainant. It is further submitted by the Respondent that no unfair labour practices has been committed by the Respondent as alleged by the Complainant under item 5 of Schedule II and item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, by issuing notice dated 9th August 1996 regarding closure of Lower Parel establishment. It is also submitted that the consequent termination which is to be effected of the said employees Respondent offered them employment at their Goregaon establishment on the terms and conditions which are applicable to the employees of Goregaon establishment. Hence the same can not be said that it amounts to change in service conditions which attracts item 9 of Schedule IV. Considering the facts the Respondent is closing down the Lower Parel establishment and have offered payment of compensation as per the provisions of section 25 FFF of the Industrial Disputes Act which do not attract any item of unfair labour practices. It is further stated that in acceptance of an offer of employment at Goregaon on the terms and conditions applicable therein do not amounts to change in service condition. It is also stated that regarding the issue of closure of the establishment it is a submission of the Complainant that prior to closure no discussion took place with the recognised union. Hence it amount to an unfair labour practices under item 5 of Schedule II *i.e.* "refusing to bargain collectively with the recognised union" the same is misconceived and untenable. It is categorically denied that Respondent never refused to bargain or discuss with the Complainant union in respect of any action regarding which negociation/discussion were sought. It is also stated that there is no categorical pleadings regarding refusal in the complaint. Hence considering allegations regarding commission of unfair labour practices under item 9 of Schedule IV and item 5 of Schedule II do not attract the present case.

4. It is further stated that prior to effecting the closure Respondent have issued a notice dated 9th August 1996 to all the employees individually and in the said notice of closure offer was given to the employees concern that if they issue to opt an employment at Goregaon establishment under the condition of service as applicable to the employees at Goregaon establishment. Otherwise allow to accept the closure compensation and other legal dues as per the provisions of law. It is further stated that as the employee concern have accepted the employment with Goregaon establishment *vide* their letter dated 12th August 1996 hence it presume that the Respondent's condition of employment of Goregaon establishment are to be applicable to them and they have to work accordingly can't claim the benefits prior to settlement which is arrived between the union and the Respondent on 22nd January 1980. Thus in limine it is a submission of the Respondent that the Respondent have not committed any act of unfair labour practices under item 5 of Schedule II and item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act by issuing notice dated 9th August 1996 as alleged by the Complainant and prayed accordingly and also filed the various documents in support of their claim supported by affidavit.

5. Thus after filing the Say and W.S. matter was proceeded further. In the mean time Complainant have filed various additional interim relief application *i. e.* below Exh. U-11, U-13 and U-15 collectively supported by affidavit and document. The said application were also decided by passing order dated 10th July 1997 under Exh. U-11 and Exh. U-9 the matter was proceeded further and evidence lead by the parties. Both the rival counsels argued vehemently regarding issue involved in the complaint and after hearing in length and going through the contents and pleadings of the parties and the documents which is on record and considering the oral evidence and case laws referred the issue which needs to be decided in the present complaint are as below :—

Issues

(1) Whether Complainant proved that the Respondents have committed an unfair labour practices under item 5 of Schedule II and item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act ?

(2) What order and reliefs ?

6. My findings in the above issues are as below :—

(1) As per final order.

(2) As per final order, reasons given below.

Reasons

5. While arguing the issue the learned Counsel for the Complainant have submitted that *vide* notice dated 9th August 1996 the workers concern came to be retrenched by the Respondent and no individual notice was sent to the workers concern *i. e.* the employee who were taken over by the new company subject to new service condition at Goregaon. It is a submission made that service conditions which are at Goregaon establishment and different than that of Lower Parel establishment in which the workers concern were employed prior to 9th August 1996. It is further stated that the individual letters which were issued are of 12th August 1996 asking them to resume on duties the workers concern have reported for duty accordingly and replied *vide* their letter dated 16th August 1996. But letter dated 12th August 1996 was were on 17th August 1996. Thus it is a case which put forth by the learned Counsel that by issuing letter dated 9th August 1996 and workers concern asking to resume for duties at Goregaon on now service condition Respondent are committed an unfair labour practices under item 9 as in fact prior to effecting the said change Respondent have failed to issue notice under section 9-A of the Industrial Disputes Act. It is mandatory provisions hence item 9 of Schedule IV attracts. It is also argued that it can not be disputed that the employees working at Lower Parel and Goregaon establishment was having separate service conditions as per the settlement dated 20th January 1980. Accordingly he took me to the service condition and argued that at Goregaon it is six days a week and at Lower Parel 5 days a week. Saturday is a holiday at Lower Parel but working at Goregaon and duties are also different. So it is a submission made that by depriving the benefits of service condition available at Lower Parel the Respondent have transferred the services of the employees to Goregaon establishment. As it amounts to unfair labour practices under guise of closure, hence it is argued that after closure of establishment transferred all employees at Goregaon. It is also argued that prior to issue notice dated 9th August 1996 on discussion were took place between Complainant union and the Respondent hence it also amounts to an unfair practices under item 5 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Thus while arguing the issue the learned Counsel submitted that the Respondent have committed the alleged act of unfair labour practices as alleged by the Complainant and the reliefs prayed in the prayer clause of the complaint needs to be allowed *in toto.*

8. In reply to the said submission the learned Counsel for the Respondent submitted that there is no question of commission of unfair labour practices and the present complaint is not filed under item 3 of Schedule IV but same is under item 5 of Schedule II and items 9 of Schedule IV and the cause of action which is arose on 9th August 1996 and by effecting the closure *vide* notice dated 9th August 1996 Respondent have not committed any act of unfair labour practices. As it has been categorically mentioned in the said notice dated 9th August 1996 it is categorically mentioned and application was given to the employees that if they want to be employed at Goregaon under service condition applicable to the employees of Goregaon they are at liberty to join and if they do not wish, they are at liberty to opt or accept closure compensation as per the provisions of under section 25 FFF and legal dues. But all the workers have accepted the employment at Goregaon. Hence the service condition which are applicable to the Goregaon employees are automatically applicable to them. It is also argued that issuance of notice of closure there is no need to issue any notice of change prior to closure. Hence the notice under section 9-A not needs to be issued as per the provisions of Disputes Act. It is also argued that the settlement dated 20th January 1980 is applicable to the employees of Lower Parel and Goregaon Establishment and the terms and conditions of the said settlement also applicable to the fresh employees even to the concern employee in the complaint who joined at Goregaon establishment. It is also stated that the closure which is effected is a legal closure and same is effected by following due process of law. Hence, whether the closure is bonafide or *malafide* this Court can not decide the same only it can be seen closure is effected or not. While arguing the issue the learned Counsel for the Respondent also referred the various case laws *i.e.*

(1) 1969 I LLJ page 242 (SC) Indian Hume Pipe Company Ltd. *V/s.* Their Workmen.

(2) 1969 I LLJ page 557 (SC) Kalinga Tubes Ltd. *V/s.* Their Workmen.

(3) 1973 LAB I/C page 461 Management Hindustan Steel. Ltd. *V/s.* Workmen.

Thus by referring the said case laws and the documents on record it is submitted that Respondent have not committed any act of unfair labour practices as alleged by the Complainant and prayed accordingly.

9. Thus rival counsels put up their oral submission in support of their case laws by referring the documents on record and pleadings therein and also case laws. After going through the same basically I have to see whether by issuing the notice dated 9th August 1996 Respondent have committed any act of unfair labour practices or not and whether acceptance of services at Goregaon establishment by the employees concern. Whether they can claim that no change in service condition needs to be effected and they should governed by the same service condition as they were previously governed at Lower Parel. And also whether the said act of the Respondent amounts to an unfair Labour practices under items as alleged and whether prior to give any affect in the said notice dated 9th August 1996 whether any notice of change under section 9-A needs to be issued by the Respondent or not. Here I say that basically notice dated 9th August 1996 which is issued is a notice of closure and if the contents therein read between the lines it is clear that apart from terminating the services of the employees concern due to closure the Respondent have offered them employment at their Goregaon establishment and if they do not wish to accept the said offer they are at liberty to accept closure compensation and legal dues as per provisions of law. In the said notice it is categorically stated that if they want to opt option of employment at Goregaon establishment they have to work under the service condition by the employees of Goregoan. And the same is accepted whether it is accepted without prejudice to right or not is not the issue of the Complainant as *vide* their letter dated 12th August 1996 workers concern have joined the employment accordingly. In this regard it is argued by he learned Counsel for the Respondent that the issue involved in the complaint is not regarding the genuiness of closure and closure of Lower Parel establishment is a fact and factum of closure can not be disputed and no pleadings to that effect in the present complaint. Here I say that the issue of notice of change as per the provisions of section 9-A if considered to be essential prior to report for duty of the workers concern at Goregaon then I say that in

the notice dated 9th August 1996 there was clear cut option to the workers concern either to opt employment at Goregaon or under the service condition applicable to Goregaon establishment or to opt accept closure compensation and legal dues as per the provisions of law. So it can not be said that the workers concern are all of a sudden without even any knowledge are transferred from Lower Parel to Goregaon but only in the interest of the workers concern the decision which has been taken by the Respondent and offered them employment at Goregoan. It can not be said that the said act of the Respondent amounts to an unfair labour practices as alleged by the Complainant in the present complaint and I say that the items of unfair labour practices with have been alleged by the Complainant *i. e.* item 5 of Schedule II and item 9 of Schedule IV do not attracts in the present complaint. Even after going through the entire documentary evidence and oral evidence and pleading of the parties it can not be said that the Respondent have committed an unfair labour practices as alleged by the Complainant. Hence by considering the facts on record and case laws referred therein and by perusing the notice dated 9th August, 1996 and other documents on record I say that Complainant have miserably failed to prove an unfair labour practices as alleged in the complaint against the Respondents. Hence for the reasons I pass the following order :—

Order

Complaint is hereby dismissed.

No order as to costs.

J. P. LIMAYE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 31st August 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 7th September 2002.

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IN THE INDUSTRIAL COURT OF MAHARASHTRA AT MUMBAI

BEFORE SHREE P. B. SAWANT, MEMBER

COMPLAINT (ULP) No. 266 OF 2001.—Wimco Employees' Union (Head Office) C/o. Wimco Limited, Indian Mercantile Chambers, Ramjibhai Kamani Marg, Ballard Estate, Mumbai.—*Complainant.—Versus*—(1) Wimco Limited, (2) Shri R. P. Waghmare, General Manager, Wimco Ltd. (3) S.G.A. Flapper, Managing Director, Wimco Limited, Indian Mercantile Chambers, Ramjibhai Kamani Marg, Ballard Estate, Mumbai-38.—*Respondents.*

CORAM.— Shri P. B. Sawant, Member.

Appearances.— Shri D. S. Bhosale, for Complainant not present.
Shri P. N. Salgaonkar, Advocate for Respondents.

ORDER

1. The Complainant has filed the present complaint against the Respondent Nos. 1 to 3 alleging that they have committed unfair labour practices within the meaning of items 3, 7 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. The facts which gave rise to the present complaint can be states as below.

2. The Complainant union is representating head office staff employed by the Respondent in the head office. The Complainant is persuading the cause of the workers. However, the Respondent was never responsive to the demands etc. Besides the activities of sale and manufacturing of safely matches the Respondent has also engaged in other activities of manufacture of Potassium Chloride, Glue, Salt, Food Product etc. Therefore the financial position of the company is very sound.

3. It is pointed out that the Respondents have adopted a strategy to reduce the head count of the staff at the head office as well as at other location under one or the other pretext. The total strength of the staff in the head office is substantially reduced by the said policy. While doing so, the Respondents have adopted dubious method by getting the work of bargaining cadre done by the other employees who are treated as non-bargainable. By this process the strength of bargainable cadre has been reduced by the company and the nomenclature non-bargainable cadre has been misused to deny them the contractual benefits. The Complainant raised demand to that effect after terminating the last settlement entered into in the year 1992. The Respondent thereafter started violating the terms of 1992 agreement and changed the conditions of service by introducing new methods etc. for which a complaint is filed by the Complainant in the Industrial Court. It is pointed out that various dubious methods are followed by the Respondent to deny the benefits to these employees. Therefore to protect the interest of the employees the union has filed a complaint in the Labour Courts and Industrial Courts successively. The Complainant was taking serious efforts for settling the matter but the Respondent Nos. 2 and 3 started resorting to pressures and harassment tactics on the workers with a view that they should leave the employment and also pending litigation.

4. In pursuance of the above the Respondent started transferring the employees and thereby one Shri S. C. Mallic was issued a letter of transfer suddenly transferring him from head office to the factory with a short notice. It is contended that the service conditions as available to Shri Mallic at head office will not be available to him at Ambernath factory and there will be a total change in the service conditions. It is also pointed out that the facility which Shri Mallic was getting will not be available to him at the factory. The location of the residence of Shri Mallic is far away from the place of work where he was transferred and therefore the transfer effected is involution of the subsiding agreement reached between the parties. The Respondent has changed the system of xeroxing and non-bargainable employees are given specific code numbers to operate the xerox machines etc. Therefore, it is pointed out that there is a total change in the working system introduced by the Respondents. The job which the Peons were doing previously is now started getting done with most sophisticated and mechanised manner. By the transfer the Peons will be required to work on Shop floor as regular production workers. The service conditions at the factory are altogether different than those prevailing in the head office.

5. The Respondents have also transferred one Shri Arun Suvarna from the head office to Chennai factory and directed him to report on 2nd April 2001. Shri Suvarna protested by his letter against the action of the Respondent testing the transfer as unjust and illegal. It is contended that Shri Suvarna is main activist of the Complainant union for last 20 years and is a Vice President of the Complainant union. The Respondent has chosen to select him for transfer in order to disassociate him from the other members of the union. The work of Shri Suvarna in the Finance Department was always appreciated. Therefore, ti is contended that without entering into an agreement with the union or the employees or without giving a notice of change actions were taken by the Respondent. The employees of non-bargainable category besides the work which the employees from Finance Department was doing is being got done by the machine or through the computerised system. By this and other grounds, it is contended that the transfer of the employees is an illegal change. No notice is given for effecting such change. The transferring the employees is also illegal and it amounts to breach of settlement and therefore the complaint has been filed.

6. The contents in the complaint are resisted by the Respondent *vide* Exh. C-8. It has specifically mentioned that whatever allegations and averments made in the complaint are totally false and those are liable to be dismissed. It is the first and for most contention that the employee Shri Suvarna has settled the matter with the management after dismissing the writ petition and therefore the contentions regarding Shri Suvarna are not being responded by the Respondent. The Respondents have denied all the allegations regarding the transfer orders, allegation of work and providing the service conditions to the employees and contended that there is no subsistance in the averments. It is pointed out that in the appointment letter of Shri Mallic, there is clause of transfer in-corporated. Therefore, there is no reason for this Court to interfere with the transfer orders. Besides the transfer order was effected in pursuance of the requisition note sent by the factory from Ambarnath. In view of the exigencies of work the transfer order was effected and therefore there are no malafides in such transfer orders. So also the transfer order of Shri Suvarna was made as per the requisition of expertised person. Therefore the allegations of malafides will not be attributable to this case.

7. It is pointed out that the company is now restructuring itself because of the financial loss incurred by it. In pursuance of that there is a process and decentralisation restructuring of purchase and transportation function of the head office and each units and factories are now required to maintain their own purchase and transport administration. The transfer orders are effected for these reasons and the decision was taken due to financial loss and to make the company financially sound. Therefore, it cannot be said that the transfer orders are malafide nor it can be branded as illegal or unfair labour practices. The employee who is transferred to another unit is governed by the terms and conditions of that unit. It is pointed out that in the given situation, there shall be no question for attracting section 9-A of the Industrial Disputes Act. Besides the conditions of service mentioned in the appointment letters are accepted by the employees. Therefore, the transfer order will not attract item 9 of Schedule IV of the Act.

8. It is contended that since last 3 years the company has gone into huge losses. The policy of the Government of India is for liberalisation and the promotion to the cottage and small scale unit to manufacture match-boxes. Therefore, the Respondents found it difficult to compete with the said cottage industry and thereby sustained losses. Because of lock of work, the company has transferred certain employees from head office to different location. The said action cannot be termed as malafide or committing breach of any agreement or settlement. The allegations of the Complainant are termed as baseless. It is also not established by the Complainant as to how the employees will be victimised on account of their transfers. Therefore, it is contended that by no stretch of imagination, item 9 of Schedule IV is attracted. With this and other grounds it is contended that the complaint deserves to be dismissed.

9. On these rival contentions, following issues are framed at Exh. O-1 :—

Issues	*Findings*
(1) Whether the Complainant has proved that the Respondents have committed an unfair labour practices under item 3, 7 and 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 ?	Negative.
(2) Whether the Complainant is entitled to the relief of declaration as prayed for ?	Negative.
(3) To what consequential relief the Complainant is entitled to ?	No relief.
(4) What order ?	As per final order.

Reasons

10. *Point Nos. 2 and 3.*—On a bare look to the contentions raised in the record it is clear that Shri Suvarna is now not espousing his cause for filing the complaint. In fact, Shri Suvarna has appeared before the Court and submitted a pursis *vide* Exh. U-12 that the cause for agitations pertaining to the transfer order of Shri Suvarna is to be treated as withdrawn. Considering the prayer under Exh. U-12, this Court has made endorsement below Exh. U-1 treating the complaint alive so far as cause of transfer of Shri Mallic is concerned. This Court has also considered that the transfer of Shri Suvarna to Chennai need not be discussed in this discussion. This particular aspect, therefore, will disentitle the Complainant for concentrating that the Respondent No. 1 has now started decentralising the policy introducing modern equipment *e.g.* work of dealing with the Bank Accounts as well as making correspondence with the Bank etc. was previously being done by the Peons themselves. Now it has been done through most sophisticated computerised methods. Besides most of the paper work is being done and completed by the employees of the Bank with when the Respondent No. 1 is having its accounts. Having regard to this fact the system introduced by the Respondent for upgrading the entire working in the establishment needs no comment. Besides, the intention in relocating Shri Suvarna to the other office at Chennai need not be commented. Therefore the submission that the work of Shri Suvarna was appreciated by several others or the presence of Shri Suvarna at the head office in the Finance Department was utmost essential are now of no avoid. In the result, the question of transfer of Shri Mallic is required to be looked into.

11. This Court has considered the submissions of the Complainant in the earlier phase of litigation when the application Exh. U-2 was contended before this Court. The observations of this Court are being turned down by the Honourable High Court referring to the change of emoluments, change in working days change in nature of work as well as personal difficulties which the employee concerned was required to do. The observations of this Court were considered by the Honourable High Court referring to the terms of service conditions mentioned in the appointment letter itself. More concentrations are being made on the stipulation that the employee shall be governed with the service conditions available at the unit or placed where he will transferred. This particular stipulation postulates that the employee not only has accepted the service conditions inclusive of the transferability clauses but has accepted the same referring to the clause that he will be governed by the service conditions however it may be different, at the place, where he will be transferred. In short, the employee if transferred to another unit he has to abide the service conditions given or laid down to him by virtue of the appointment letter.

12. In consonance with the above discussion it is very clear that merely because the union activity or raising a cause at several placed by the union the transfers cannot be termed as malafide etc. It is also very clear that the union activity cannot always be a cause for transferring the employee in order to get rid of such employee. Honourable His Lordship in the observation of the Writ Petition preferred against the order of this Court has observed that normally no

employer will choose to cause a meaningful prejudice to its employees. Honourable High Court has specifically mentioned in the order itself that the Industrial Court while deciding the complaint should not be influenced by the observations made while considering the order passed by this Court. However, even if the fact on merits if now considered, it will reveal that the Respondents have successively pointed out before the Honourable High Court that on transfer of Shri Mallic will be getting additional wages than that of the wages which he was getting at the head office. The service conditions admittedly are changed. Shri Mallic needs to work with machine as all other employees. This fact has also been clarified before the Honourable High Court that Shri Mallic will be required to open the bag and no more work will be supposed to be done by him. Thirdly the working hours though are increased the service conditions offered to the workers at Ambarnath factory are of the same nature of having six days a week. Therefore the Complainant cannot except the different service conditions as he was enjoying when he was working in the head office. In consonance with this fact the oral evidence if seen it reveals that Shri Mallic has not appeared before the Court nor has led any evidence to substantiate the averments advanced by the union on his behalf. Therefore this Court has independently scrutinised the pleadings and the supporting documents so far as averments of transfer of breach of settlement are concerned and found that those averments are not being substantiated with any material on record. In fat, Shri Mallic has very wisely kept himself back without examining himself before the Court.

13. Shri D. S. Bhalerao who is the General Secretary of the Complainant union has chosen to examine himself on behalf of the Complainant and tried to substantiate the averments advanced in the complaint. He has referred to the charter of demand submitted by the union and trasnposing of the reference to the Industrial Court. He has pointed out hat one of the demand is prohibiting the employer from giving the job of bargainable cadre to the non-bargainable cadre and also pointed out that during the pendency of such reference the company has transferred the employee. He has explained the difference in the service conditions available at head office and Ambarnath factory. However to my surprise Shri Bhalerao has thereafter not turned up to the Court for offering himself for the cross-examination. Therefore, this Court has passed an order closing the evidence of the Complainant. The Respondents thereafter filed a pursis and chosen not to lead any oral evidence and thereafter relied on the oral submissions only.

14. Considering this situation the allegations under items 3, 7 and 9 of Schedule IV are concerned it has to be borne in mind that item 3 though refer to the malafide sense in the transfer orders the fact of the case in hand does not reflect that when the employer has chosen to restructure the entire work force for the better prospective and to come out of the financial crisis then the transfer order cannot be styled as malafide or under the guise of the management policy. The management policy is always towards the betterment of the establishment and for the purpose of industry and not for depriving the workers from the benefits. In view of this contention the employer who has to man his own business is supported to minimise the expenses by way of minimising the work force or by way of construing the relocation of the employees which suits the situation for the betterment of the establishment. With this discussion. I have found that there is nothing wrong in the policy or relocating the employees adopted by the employer and it is clear that there is no sense following of unfair labour practice within the meaning of item 3 of Schedule IV of the Act.

15. Item 7 is concerned it leads to an inference that the employer has made discrimination against the employee for filing charges or testifying against the employer in any enquiry or proceeding relating to any industrial dispute. Referring to the evidence on record, I have found no whisper to substantiate these averments. There was no question of discharging anybody either of the employee nor there was any question for making any discrimination about any of the misconduct or charges against the employee. Therefore, I do not find that item 7 attracts in the instant case.

16. So far item 9 is concerned there is no failure to implement any settlement or award on the part of the employer. This conclusion is drawn on the basis of the earlier discussion. Besides the service condition embodied in the appointment letters, itself are clarifying that there is a stipulation in the appointment letter regarding transferring of the employee. Therefore, by remaining strictly adhere to the said stipulation if any action is taken by the employer, it will not necessarily attract item 9 of Schedule IV of the Act. In the result, the findings to the points are in the negative. It is also to be mentioned here that as a general principle the allegations of following of unfair labour practice are to be justified by the person who is alleging the same. Now considering the nature of litigation the workmen who has suffered with the order of transfer were excepted to stop in the box and substantiate the averment in the complaint. Instead of that the General Secretary of the union has stopped into box but ultimately has not offered himself for the cross examination. This conduct on the part of the Complainant and the aggrieved workman is not eloquent to comprise the allegations of following of unfair labour practice. Therefore in the result the complaint must fail. Hence the order.

Order

The complaint is hereby dismissed.

Parties are left to their own costs.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 17th August 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 19th September 2002.

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BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR.

REVISION APPLICATION (ULP) No. 89 and 1994.—The Executive Engineer, Public Works Division, Miraj, District. Sangli.—*Petitioner.* —*Versus*—Shri Dnyanu Parasu Kamble, At post Ashta, Tal. Walwa, District Sangli.—*Respondent.*

In the matter of Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri S. R. Pisal, Asstt. Govern. Pleader for the Petitioner.
Shri K. D. Shinde, Advocate for the Respondent.

Judgement

This is a Revision by Original Respondent Executive Engineer challenging legality of judgment and order passed in Complaint (ULP) No. 236 of 1989 by Labour Court, Sangli, whereby he is directed to pay back wages to the original Complainant, alongwith continuity of service till the date of retirement and pay all retirement benefits.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was in employment of Executive Engineer as a Mile Mazdoor. He was referred, while in service to the Civil Surgeon, Sangli for ascertaining birth date and the Civil Surgeon has opined that his birth date is 2nd June 1929. Accordingly, his such birth date was recorded in his service book.

3. One Sitaram Parasu Kamble is brother of the Complainant. He too was in employment as a Mile Coolie and retired on 1st April 1979. Said brother made a complaint on 2nd December 1985 and 19th January 1987 to the Executive Engineer that he is younger brother of the Complainant has retired on 1st April 1979, however the Complainant is still continued in service and an enquiry be made. Said brother produced School Leaving Certificate of Education Department of Zilla Parishad, Sangli of one Dnyanu Parasu Mahar stating that the same is of the Complainant, wherein the birth date is shown as 15th July 1992, alongwith his compliant application dated 21st January 1987. The Executive Engineer, then called upon the Complainant to furnish his School Leaving Certificate. The Complainant gave an explanation that he never attended the School and cannot produce the School Leaving Certificate. The Executive Engineer then served chargesheet dated 11th April 1989 upon the Complainant alleging that he got false birth date recorded in the service-book, failed to obey orders of Superiors by not furnishing School Leaving Certificate or other evidence and illegally got continued in service, despite retirement of his younger brother. The Complainant then replied the chargesheet on 19th April 1989 reiterating same contents of earlier explanation. He pleaded that he never attended the school and recorded birth date in the service-book is as per opinion of Civil Surgeon, Sangli. He further pleaded that Sitaram Parasu Kamble is not his younger brother but elder. The enquiry then proceeded further. The enquiry officer held *vide* report dated 28th June 1988 that all charges levelled against the Complainant are proved. The Complainant then gave explanation on same day, denying findings of the Enquiry Officer. The Executive Engineer then passed order on 29th June 1989 dismissing the Complainant from service with effect from 30th June 1989.

4. Above complaint was filed on 13th September 1989 alleging that the very mode of proceeding against the Complainant is illegal. In fact, Sitaram Parasu Kamble is his elder brother and not younger. Alleged School Leaving Certificate is not of him and untrustworthy too. Enquiry was completed very hurridly. His brother Sitaram was cited as witness. He requested by letter dated 19th June 1989 that he may be permitted to engage an Advocate and pointed out that brother Sitaram is elder by 10 years. But the Enquiry Officer rejected his request and hurridly proceeded further. He was not allowed to cross-examination the witnesses and the entire enquiry was completed on 26th June 1989 itself. The Enquiry Officer directed him to give written statement on 28th June 1989 but recorded a finding on same date. Then he was terminated by order dated 29th June 1989. According to the Complainant therefore the enquiry is contrary to the principles of natural justice and the findings are totally perverse. He was dismissed on the date of retirement. No show cause notice was given to him regarding proposed punishment. In fact, the punishment of dismissal is awarded only with a view that his retirement benefits should be forfeited.

5. On above averments the Complainant alleged unfair labour practice under item 1(a), (b) (d), (f) and (g) of Schedule IV of the M.R.T.U. and P.U.L.P. Act. He then prayed for reinstatement with continuity of service till retirement and other consequential reliefs.

6. The Executive Engineer, objected the complaint, *vide* written statement filed on 7th October 1990 contended that the Complainant did not furnish his own School Leaving Certificate and hence School Leaving Certificate furnished by his brother. Sitaram was relied wherein Complainant's birth date is shown as 15th July 1912. He himself did not send the Complainant to Civil Surgeon, Sangli and hence birth date mentioned in service-book is incorrect. Proper opportunity defend himself in the enquiry was given to the Complainant and findings of the Enquiry Officer are not perverse. Proved misconduct is grave and serious and punishment of dismissal is legal and proper. Thus, he justified the action and prayed for dismissal of the complaint.

7. Learned Labour Court then framed issues at Exh. O-2 and the parties went to the trial. None of the parties led oral evidence. The Complainant produced chargesheet, reply thereof his other explanation and final punishment order. The Executive Engineer produced zerox copy of requirement page of Complainant service-book, zerox copy of questioned School Leaving Certificate and copies of Enquiry Papers.

8. Learned Labour Court, on perusal of evidence and hearing both parties, observed that two witnesses *i. e.* Shri Patil retired Road Karkoon and Shri Waman Bandu Kamble retired Mile Mazdoor are directly examined on 26th August 1989 in the enquiry although not cited as witnesses in the chargesheet. It then observed that three witnesses were not allowed to be cross-examined by the Complainant. In addition no opportunity of being hearing was given prior to imposing punishment of dismissal. It then held that the enquiry is completed with undue haste and with utter disregard to the principles of natural justice.

9. Learned Labour Court further observed that the Executive Engineer never prayed for permission to lead evidence to substantiate the dismissal if it is held that enquiry is unfair and the findings are perverse. It then found that the School Leaving Certificate is suspicious and it is not established that the same is of the Complainant. Ultimately, it held that Complainant's termination is an unfair labour practice and allowed the complaint as above, by judgment and order dated 4th May 1994. The same is challenged in this Revision Application.

10. I heard both parties. Considering rival submission following points arise for my determination :—

(i) Whether impugned finding that findings that Complainant's termination is an unfair labour practice is legal and proper ?

(ii) What order ?

11. My findings on above points are as under :—

(i) Yes.

(ii) The Revision Application is dismissed.

Reasons

12. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971, it is not necessary to scrutinise rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order ? In other words, whether impugned order is perverse of justifiable ?

13. Learned Assistant Government Pleader Shri Pisal representing the Executive Engineer argued that the Complainant was previously working under the Block Development Officer of Walwa Panchayat Samitee, Islampur and his birth date was recorded as 2nd June 1929. The Complainant was transferred in the year 1974 from Zilla Parishad, Sangli to the Executive Engineer, Public Works Department, Miraj. Complainant's brother furnished Complainant's School Leaving Certificate. The Complainant himself did not furnish any evidence in rebuttal of the same and hence said School Leaving Certificate was accepted. Complainant's brother Sitaram was younger to the Complainant, retired on 1st April, 1979 and thus all charges are clearly establishment. Learned Labour Court ignored all such facts and recorded a perverse finding, which is liable to be set-aside.

14. Shri K. D. Shinde, learned Advocate representing the Complainant replied that Enquiry Officer proceeded on the assumption that Sitaram is Complainant's younger brother and School Leaving Certificate of Dnyanu Parasu Mahar is of the Complainant's himself. In fact, Complainant's birth date was recorded as 2nd June, 1929 long back and it was not necessary to change the same when he was on the verge of retirement. There is absolutely no explanation as to how it was found by the Enquiry Officer that brother Sitaram is younger to the Complainant. The Complainant has stated in the explanation dated 1st April, 1989 that brother Sitaram is not younger but elder by 10 years. He then further pointed that the School Leaving Certificate is doubtful on its face. The standard is shown as 'infect'. Enrollment is on 1st December, 1920 and the School is left on 30th December, 1921. As such, finding of the Labour Court is proper. He relied on a decision of Honourable Apex Court in *Kartarsingh* Vs. *State of Punjab reported in 1991 Lab. I. C. at page 1012.*

15. On perusal of enquiry report, it is crystal clear that no opportunity was given to the Complainant to cross-examine his brother Sitaram as well as other two witnesses. The Complainant has stated in explanation dated 19th April, 1989 that brother Sitaram is not younger but elder by 10 years. It was, therefore, necessary for the Executive Engineer to establish that brother Sitaram was younger to the Complainant. But it is seen that the Enquiry Officer, has blindly believed statement of Sitaram that he is younger brother of the Complainant. There is no reason whatsoever for the same. Same is the case regarding School Leaving Certificate. Firstly, the same is of one Dnyanu Parasu Mahar. It is stated that he is enrolled on 1st November, 1920 and that too in 'infect' standard. Reason for leaving the School that is leaving the turn is also unsatisfactory. It is also interesting to note that brother Sitaram made complaint on 2nd December, 1985 and 19th January, 1987 but no cognizance thereof was taken till issuance of chargesheet on 11th April, 1989. The Complainant has given explanation on 26th March, 1987 and then there was no progress. Thus, it is clear that old complaint applications were re-opened when the Complainant was on the verge of retirement. Apart from that blind reliance on statement of brother Sitaram as well as alleged school Leaving Certificate produced by him is unsustainable in law. I am unable to appreciate as to how the Enquiry Office held Complainant's brother to be younger to him as well as questions School Leaving Certificate of the Complainant alone. In fact, various entries in the School Leaving Certificate making the same suspicious and entrust worthy. The Complainant was examined long back by the Civil Surgeon and there was no dispute about his birth date till the year of services of the chargesheet dated 11th April, 1989. I, therefore, find that learned Labour Court has rightly held that finding of Enquiry Officer are perverse.

16. In any case, punishment for alleged misconduct was unjustified as per decision of Honourable Apex Court in *Kartarsingh's case (referred supra).* It is held therein that dismissal order passed three day's prior to the retirement of delinquent, having unblemished service of 29 years, is unjustified and order of dismissal was converted into compulsory retirement. In the present case the Complainant was going to retire on 30th June 1989. As such, in any case, punishment of dismissal was totally unjustifiable.

17. In the background of above discussions, I find that learned Labour Court was well justified in allowing the complaint. Therefore, there is no perversity or arbitrariness in impugned decision. As such, no interference is called for as there is every subsistance in its reasoning. Accordingly, I answer point No. 1 in the affirmative and pass following order.

Order

(i) The Revision Application is dismissed.

(ii) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 16th September 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR.

REVISION APPLICATION (ULP) No. 30 and 1998.—Maharashtra State Road Transport Corporation, Sindhudurg, through Divisional Controller.—*Petitioner.* —*Versus*—Shri Balkrishna Narayan Ghadi, At Post Mahan, Tal. Malvan, District Sindhudurg.—*Respondent.*

In the matter of Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri M. G. Badadare, Advocate for the Petitioner.
Shri P. N. Hebalkar, Advocate for the Respondent.

Judgement

This is a Revision by Original Respondent Maharashtra State Road Transport Corporation challenging legality of judgment and order passed in Complaint (ULP) No. 10 of 1992 by Labour Court, Kolhapur, whereby the Corporation is directed to continue interim temporary reinstatement of its employee driver with continuity of service and to pay back wages from the date of his dismissal till the date of interim temporary reinstatement.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was driving a bus on 18th July 1988 and an accident took place. He was chargesheeted an enquiry took place and then he was dismissed on 9th January 1992. Above complaint came to be filed on 16th January 1992 alleging that the Complainant was neither rash nor negligent and driving the vehicle at low speed. The incident was purely an accident and he is not responsible for the same. The enquiry was not fair and proper and the findings are totally perverse. According to him his dismissal is an unfair labour practice under item 1 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Finally, he claimed reinstatement with continuity of service and full back wages.

3. The Corporation filed its written statement at Exh. 11 and traversed all material allegations made by the Complainant. It contended that the Complainant drove the bus with high speed without observing speed and driving rules, especially in rainy season and that too in Konkan Region. He ought to have been more careful in rainy season but was negligent. Therefore, the enquiry was made. Proved misconducts were serious as one of the passenger died due to accident. As such, the punishment is well justifiable. Finally, it prayed for dismissal of the complaint.

4. The Labour Court framed issues at Exh. 15 and the parties went to the trial. None of the parties led oral evidence. The Corporation produced entire enquiry proceeding. The Complainant admitted fairness of the enquiry *vide* pursis dated 12th December 1996.

5. Learned Labour Court, on perusal of enquiry proceeding and hearing both parties observed that width of the road at the spot of the accident was of 12 feet the bus was in second gear and none of the passengers stated that the bus was in high speed. It further observed that a truck came from opposite direction, there was a turn on the spot, the Complainant tried to take the bus to one side by applying breaks but the bus slipped and turned on its left side due to rains. It further observed that no post-mortem report of dead passenger was made. Ultimately it held that the Complainant was driving the bus at moderate speed but the bus slipped as the 'kaccha portion' by the side of main road was slippery and the findings are perverse. It then observed that the Corporation has not prayed for an opportunity to lead evidence to justify the action if the findings are held to be perverse and hence is not entitled to lead the evidence. Ultimately, it held that the Corporation has indulged into unfair labour practice and allowed the complaint as above, *vide* judgment and order dated 24th October 1997 same is challenged in this revision.

6. I heard both Advocates. Considering rival submission following points arise for my determination :—

(i) Whether finding of Labour Court that findings of Enquiry Officer are perverse, is justifiable

(ii) Whether finding of Labour Court that punishment of dismissal is an unfair labour practice is justifiable ?

(iii) What order ?

7. My findings on above points are as under :—

(i) Yes.

(ii) Yes.

(iii) The Revision Application is dismissed.

Reasons

8. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order ? In other words, whether impugned order is perverse of justifiable ?

9. The Complainant was served with chargesheet dated 18th August 1988 alleging four misconducts. They mainly pertain to gross negligence, thereby causing damage to the vehicle breach of circulars/orders and over-speed. It is alleged that he drove the bus by exceeding speed limit, took the bus to the extreme left side of the road while giving side on a turn to the truck coming from opposite side and then the bus slipped and turned on its side. It is further alleged that three passengers were injured and one passenger died later on.

10. The Corporation examined four witnesses in the enquiry. First is Reporter. Assistant Traffic Superintendent. He said that the Complainant should have driven the bus in slow speed and ought to have controlled the bus by gear only, however, was totally negligent to the situation and rainly season. He stated in the cross-examination that the bus was in the second gear and none of the passenger stated that the Complainant was driving the bus at excessive speed. He also admitted that post-mortem report of the alleged dead person is not produced. Other witnesses have stated that no passenger sustained injury but left the spot by walking.

11. Shri Badadare, learned Advocate representating the Corporation submitted that the Labour Court cannot sit as an Appellate Court over the Enquiry Officer and findings of the Enquiry Officer are reasonable and probable. Had the Complainant was serious about rainly season and width of the road at the spot he could have avoided the accident.

12. Advocate Shri Hebalkar, learned Advocate representating the Complainant replied that the Complainant took utmost case. The vehicle was in moderate speed was taken in second gear but it slipped due to 'kaccha road only." Therefore, finding of learned labour Court is proper.

13. It has come in the enquiry that the vehicle was in second gear and was not in high speed. Thus the Complainant was driving the bus at a moderate speed. The vehicle was required to be taken to left on 'kachha road' as width of the tar road was 12 feet only and a truck was coming from the opposite side in high speed. Defence of the Complainant is supported by witnesses in the enquiry. It was raining at that time and obviously the bus slipped to the left. As such, there was no evidence to attribute negligence to the Complainant. No evidence was produced before the Enquiry Officer that passenger died due to accidental injured. In fact, there is no evidence of death. It is nowhere explained as to where the passenger died and how he was carried from the spot to the hospital. No post-mortem report is produced on record. As such, the very fact of death is not established in the enquiry. I, therefore, find that learned labour Court has rightly held that finding of the Enquiry Officer are perverse. Accordingly, I answer point No. 1 in the affirmative.

14. Admittedly, there is no prayer in the written statement to give opportunity to the Corporation to lead evidence to justify the action if the findings are held to be perverse. Therefore, learned Labour Court has rightly held that punishment imposed is an unfair labour practices, is liable to be set-aside, and the Complainant is entitled to reinstatement with continuity of service and full back wages. The Complainant was temporarily reinstatement as per interim order. Thus, the order directing his continuation and payment of back wages for the intervening period, is well justifiable. Accordingly, I answer point No. 2 in the affirmative and pass following order.

Order

(i) The revision is dismissed.

(ii) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 7th October 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———————

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR.

COMPLAINT (ULP) No. 16 OF 2002.—Kishore Rangrao Patil, 1142, D ward, Shukrawar Peth, Kolhapur.—*Complainant*.—*Versus*—Kolhapur Municipal Corporation, Kolhapur, through its - Commissioner.—*Respondent.*

In the matter of Complaint u/s. 28(1) read with items 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri U. B. Jadhav, Advocate for the Complainant.
Shri Y. G. Salokhe, Advocate for the Respondent.

Judgment

This is a complaint under section 28(1) read with item 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

2. Admittedly, the Complainant is serving under the Respondent - Kolhapur Municipal Corporation as a Clerk. The Municipal Commissioner suspended him by order dated 3rd August 2001 on the ground that he is absence for a long period. He was then served with a show cause notice dated 13rd August 2001 as to why he should not be terminated from service. He then gave an explanation dated 17th August 2001. Municipal Commissioner then imposed penalty of bringing the Complainant on basic scale of post of clerk by order dated 27th September 2001.

3. It is the case of the Complainant that he has worked honestly for 19 years under the Corporation and was never absent without permission. He started suffering from blood pressure in the years 2000 and 2001. Besides, his wife and daughter undergone surgery during said period. There is no other person in his family except him to take care of his wife and children. As such, he was unable to attend the duties. He made applications for grant of leave as well as gave oral intimation for leave. The leave was not rejected. He was on duty on 22nd February 2001, started suffering from giddiness and was admitted with 'Nila Diagnotic Center. He was advised bed-rest. He sent leave application alongwith medical certificate through his nephew but the same was not accepted by his office. As such, his explanation for absenteesm is well justifiable.

4. It is further alleged that the Corporation ought to have initiated enquiry against him and then he would have certainly been able to prove reasons of absenteesm.

5. It is further alleged that the Corporation is bound by provisions of the Maharashtra Civil Services Rules, Model Standing Orders framed under the Industrial Employment Standing Orders Act and other Labour laws. As such, it was obligatory unon the Corporation to serve chargesheet upon him and to hild regular enquiry as per Maharashtra Civil Services (Discipline and Appeal) Rules. Eventually, punishment imposed is bad in law. In addition, no opportunity to defend himself was extended while imposing punishment and therefore, the punishment is contrary to principles of natural justice as well as service rules.

6. It is further alleged that punishment of bringing him on basic scales of post of clerk is a major punishment for which an enquiry is mandatory. Therefore punishment imposed is bad in law.

7. According to the Complainant, therefore, Corporation's action is an unfair labour practice.

8. On above averments, the Complainant has prayed for declaration of requisite unfair labour practice setting aside the punishment order, direction to pay due wages without withholding increments and other consequential reliefs.

9. The Corporation filed its written statement at Exh. C-8 contending that the Complainant was found under influence of liquor on 18th March 1998 while on duty and hence his one increment was withheld for two years. Later on, his two increments were permanently withheld by order dated 22nd October 1999 on account of absent without permission for 72 days. He was suspended on 3rd August 2001 on account of 329 day's absence in the years 2000 and 2001. Later on, he was punished by brining his scale on basic pay by order dated 27th September 2001. Now, he is absent from 24th March 2002. As such, it is case of chonic absentesm. It is further case of the Corporation that he was served with show cause notice dated 13th August 2001 as to why he should not be terminated from service. Even then lesser punishment is imposed. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

10. Considering rival pleadings, following issues arise for my determination :—

(*i*) Does the Complainant prove that the mode of inquiry and punishment imposed upon him is contrary to service rules and is an unfair labour practice under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 ?

(*ii*) What order ?

11. My findings, on above issues, are as under :—

(*i*) Yes.

(*ii*) The complaint is partly allowed.

Reasons

12. Although, it is alleged by the Complainant that the Respondent has engaged in an unfair labour practice under item 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, there is no elaborate pleadings regarding indulgence in an act of force or violence. Consequently, no issue is framed regarding unfair labour practice under item 10.

13. None of the parties led evidence *vide* pursis Exh. CU-1 stating that the complaint itself be decided finally. The Complainant produced copy of punishment order. The Corporation produced copies of earlier punishment orders, suspension order dated 3rd August 2001 and punishment order dated 27th September 2001. It has also produced copy of requisits muster roll.

14. Shri Jadhav, learned Advocate representing the Complainant vehemently argued that the punishment imposed is major one for which a ful-fledged enquiry is mandatory. No opportunity was extended to the Complainant to put forth *bonafide* reasons for the abseteesm. In addition, the same is shockingly disproportionate. As such, order imposing penalty is arbitrary and vindictive.

15. Shri Salokhe, learned Advocate representing the Corporation replied, by relying upon Section 56 of the Bombay Provincial Municipal Corporation Act that minor penalty can be imposed without enquiry and no fullfledged enquiry is necessary.

16. Section 4 and 5(i)(i) of the Bombay Provincial Municipal Corporation Act provides that Standing Committee shall frame regulation prescribing the procedure to be followed in reviewing their service or dismissing or otherwise punishing any municipal officer or servant. Advocate Shri Salokhe submitted that the Corporation has adopted the procedure prescribed under the Maharashtra Civil Services (Discipline and Appeal) Rules,. Rule 10(2) thereof says that if in a case, it is proposed to withhold increment with cumulative effect for any period, an enquiry shall be held in a manner as laid down in Sub-Rules (3) to (27) of Rule 8.

17. Section 56 of the Bombay Provincial Municipal Corporation Act provides for imposition of penalty of Municipal Officer and servants. But procedure thereof is not laid down under said section. Section 56(2) provides penalties of suspension and reduction to a lower post or time scale or to lower stage in a time scale. Previously, the Complainant was suspended by order dated 3rd August 2001. Surprisingly, his period of suspension in not stated. The Suspension is

by way of punishment. Labour on, he was served with show cause notice of termination. I am unable to appreciate as to how two punishments *i.e.* suspension as well as bringing down him to basic scale of the post of Clerk, are imposed. In addtion, there is nothing on record to show about explanation of the Complainant and medical certificates. The Corporation has adopted procedure prescribed under the Maharashtra Civil Services Rules. Impunged action of the Corporation is contrary to such Rules and hence unsustainable in law. It further appears that no proper opportunity of being heard is extended to the Complainant. Accordingly, I answer point No. 1 in the affirmative.

18. Before parting with this order, I must make it clear that affirmative finding of unfair labour practice is recorded mainly for violation of service rules and not extending proper opportunity to the Complainant. The Corporation is at liberty to take appropriate action against the Complainant strictly according to provisions of law.

19. In the result, I pass following order.

Order

(*i*) The complaint is partly allowed.

(*ii*) It is declared that the Respondent has indulged into unfair labour practice under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) It is directed that the Respondent shall cease and desit from engaging into such unfair labour practice forthwith.

(*iv*) Punishment order dated 27th September, 2001 bringing the Complainant of basic scale of the post of clerk, is set aside.

(*v*) The Respondent is directed to pay difference of wages, if any, to the Complainant within one month from today.

(*vi*) Paties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 16th September 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———

BEFORE **THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR.**

COMPLAINT (ULP) No. 94 of 2002.—Shri Bhopal Ramchandra Taral, R/o. Vadanage, Tal. Karveer, Dist. Kolhapur.—*Complainant.*— *Versus* — Kolhapur Municipal Corporation, Kolhapur, through its Commissioner..—*Respondent.*

In the matter of Complaint u/s. 28(1) read with items 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri U. B. Jadhav, Advocate for the Complainant.
Shri Y. G. Salokhe, Advocate for the Respondent.

Judgment

This is a complaint under section 28(*1*) read with item 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

2. Admittedly, the Complainant is working with the Respondent - Kolhapur Municipal Corporation as a driver. He was on duty on 14th September, 2001 from 2 p.m. to 10 p.m. He was present on that day at 9 p.m. of Corporation's Workshop. Another driver Shri R. R. Magdum was driver on Corporation's jeep. He took Jeep No. MH-09-9874 out from the workshop to drop Sanitary Inspector Shri B. G. Maralkar to his house. The jeep was checked at the gate by the Gate Keeper and some spare parts were found in the Jeep. The Complainant was present in the workshop at that time.

3. Corporation's Assistant Engineer then served a show cause notice dated 20th September 2001 upon the Complainant alleging that the Complainant advised driver Shri Magdum that he (Shri Magdum) should not disclose any-body's name and then was assured with 'no action'. It is further alleged in the show cause notice that the Complainant was aware as to who kept the spare parts in the jeep but failed informed accordingly to the Security Department.

4. The Complainant then gave reply dated 27th September 2001 that he never assured anything to driver Shri Magdum but simply stated that he should not be afraid if has not indulged into any misconduct. He futher clarified that he is unware of the person who kept the spare parts in the jeep. Municipal Commissioner then imposed penalty of with holding two annual increments permanently upon the Complainant, by order dated 16th January 2002.

5. It is case of the Complainant that he is nowhere concerned with the attempt of stealing the spare parts through Corporation's jeep, was unaware of the same and therefore, was not expected to inform said fact to Security Department. In fact, he was simply present there. He simply stated to Driver Shri Magdum that he should not worry if not involved in the incident. He never gave any assurance to Shri Magdum that no action will be taken against him if he does not disclose name of any person.

6. It is further alleged that the Corporation is bound by provisions of the Maharashtra Civil Services Rules, Model Standing Orders framed under the Industrial Employment Standing Orders Act and other Labour laws. As such, it was obligatory upon the Corporation to serve chargesheet upon him and to hold and regular enqauiry as per Maharashtra Civil Services (Discipline and Appeal) Rules. Eventually, punishment imposed is bad in law. In addition, no opportunity to defend himself was extended while imposing punishment and therefore, the punishment is contrary to principles of natural justice as well as service rules.

7. According to the Complainant, therefore, Corporation's action is an unfair labour practice.

8. On above averments, the Complainant has prayed for declaration of requisite unfair labour practice setting aside the punishment order, direction to pay due wages without withholding increments and other consequential reliefs.

9. The Corporation filed its written statement at Exh. C-6 contending that the Complainant

pressurised driver Shri Magdum not to disclose anybody's name and further assured Shri Magdum with no action. The Complainant admitted in explanation dated 27th September, 2001 given to the show cause notice dated 20th September, 2001 that he encouraged driver Shri Magdum. As such, Complainant's involvement in attempt to theft is clearly established. Complainant's explanation was found unsatisfactory and hence proper punishment was imposed under section 56 of the Bombay Provincial Muncipal Corporations Act. It is further contended that opportunity to defend himself was given to the Complainant. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

10. Considering rival pleadings, following issues arise for my determination :—

(*i*) Does the Complainant prove that the mode of inquiry and punishment imposed upon him is contrary to service rules and is an unfair labour practice under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act ?

(*ii*) What order ?

11. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The complaint is partly allowed.

Reasons

12. Although, it is alleged by the Complainant that the Respondent has engaged in an unfair labour practice under item 10 of Schedule IV of the Act, there is no elaborate pleadings regarding indulgence in an act of force or violence. Consequently, no issue is framed regarding unfair labour practice under item 10.

13. None of the parties led oral evidence, *vide* pursis Exh. CU-1 stating that the complaint itself be decided finally. The Complainant produced copies of show cause notice, his explanation, punishment order and two representations for cancellation of the punishment. No documentary evidence was adduced by the Corporation.

14. Shri Jadhav, learned Advocate representing the Complainant vehementaly argued that it is nowhere explained in punishment order as to how the Complainant was found guilty. As such, order imposing penalty is arbitrary and vindictive. In fact, the punishment of with holding two increments permanently is a major punishment for which a fulfledged enquiry was mandatory. The Complainant has nowhere accepted in the explanation that he pressurised driver Magdum not to disclose anybody's name and assured Shri Magdum with no action.

15. Shri Salokhe, learned Advocate representing the Corporation replied, by relying upon Section 56 of the Bombay Provincial Municipal Corporation Act that minor penalty can be imposed without enquiry and no fullfledged enquiry is necessary.

16. Section 4 and 5(*1*)(*i*) of the Bombay Provincial Municipal Corporation Act provides that Standing Committee shall frame regulation prescribing the procedure to be followed in reviewing their service or dismissing or otherwise punishing any municipal officer or servant. Advocate Shri Salokhe submitted that the Corporation has adopted the procedure prescribed under the Maharashtra Civil Services (Discipline and Appeal) Rules,. Rule 10(2) thereof says that if in a case, it is proposed to withhold increment with cumulative effect for any period, an enquiry shall be held in a manner as laid down in Sub-Rules (3) to (27) of Rule 8.

17. There is nothing on record about seizure of spare parts, panchanama and statements if any, recorded of concerned witnesses as well as also of driver Shri Magdum. It apprear that the Corporation has presumed that the Complainant pressurised driver Shri Magdum not to diclose any-body's name and with assurance of no action. Thus, there is violation of the Maharashtra Civil Services (Discipline and Appeal) Rules.

18. Section 56 of the Bombay Provincial Municipal Corporation Act provides for imposition

of penalties on Municipal Officer and servants. But procedure thereof is not laid down under said section. Therefore, the Corporation has adopted procedure precribed under the Maharashtra Civil Services Rules. Impugned action of the Corporation is contrary to such Rules and hence unsustainable in law. Besides, Punishment order is not speaking one. It is nowhere whispered as to how the Complainant was found to be guilty of misconduct. I, therefore, find that finding of guilt as well as punishment imposed is contrary to law are service rules and is an unfair labour practice under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Accordingly, I answer point No. 1 in the affirmative.

19. Before parting with this order, I must make it clear that affirmative finding of unfair labour practice is recorded for violation of service rules. The Corporation is at liberty to take appropriate action against the Complainant, strictly according to provisions of law.

20. In the result, I pass following order.

Order

(*i*) The complaint is partly allowed.

(*ii*) It is declared that the Respondent has indulged into unfair labour practice under item 9 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

(*iii*) It is directed that the Respondent shall cease and desist from engaging into such unfair labour practice forthwith.

(*iv*) Municipal Commissioner's order dated 16th January, 2002 withholding Complainant's two increments permanently is set-aside.

(*v*) The Respondent is directed to pay difference of wages, if any, to the Complainant within one month from to-day.

(*vi*) Paties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 16th September 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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BEFORE THE MEMBER INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR.

REVISION APPLICATION (ULP) No. 57 OF 1999.—(1) Asstt. Mechanical Engineer, M.S.R.T. Corporation, Sangli; (2) Divisional Controller, M.S.R.T. Corporatiion, Sangli.—*Petitioners.* (Original Respondents).—*Versus*—Gopal Ganpatrao Patil, H. No. 1185, KH/3-E ward, Rajarampuri 3rd lane, Kolhapur.—*Respondent.* (Original Complainant).

In the matter of Complaint u/s. 28(1) read with items 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates— Shri A. N. Kulkarni, Law Officer for the Petitioners.
Shri U. B. Jadhav, Advocate for the Respondent.

Judgment
(Dated 25th September 2002)

This is a revision by original Respondent - M.S.R.T. Corporation challenging legality of Judgment and Order passed in Complaint (ULP) No. 64 of 1999 by Labour Court, Sangli whereby the Corporation is directed to reinstate its Electrician with continuity of service and full back wages.

2. Admittedly, present Respondent (hereinafter referred to as 'the Complainant') was in employment of present Petitioner (hereinafter referred to as 'the Transport Corporation) as an Electrician. The Complainant sent an application dated 22nd November 1995 for grant of medical leave of the period from 15th November 1995 to 20th November 1995 by Regd. post to the Corporation and the same was received by the Corporation on 29th Noevember 1995. He enclosed a medical certificate alongwith said application. The Corporation then served chartge-sheet dated 25th January 1996 upon him alleging misconduct under Clauses-10 (indicipline), 20 (intemperate habits affecting the efficiency or the work) and 35 (irregular attendance, absence without leave and without reasonable cause and absence without prior permission) of its Discipline and Appeal Procedure (revised). The Complainant gave reply dated 12th February 1996 to the charge-sheet and then an enquiry took place. The enquiry officer held that all charges levelled against the Complainant are duly proved. Ultimately, he was dismissed from service *w.e.f.* 26th April 1996.

3. Above complaint was filed on 25th June 1996 alleging that leave was solicited for the period from 15th November 1995 to 20th November 1995. There was weekly of on 21st November 1995. The Complainant then worked on 22nd November 1995. He then sent an application for medical leave for the period from 23rd November 1995 to 7th December 1995. Such leave application was sent by Under Certificate of Posting. Even then a false and vague charge-sheet was served upon him. Copies of documents produced in the enquiry were not delivered to him and the enquiry is not fair and legal. Besides, the enquiry officer played a role of reporter, enquiry officer as well as punishing authority. Findings of the enquiry officer are baseless and perverse. In addition, his past record was not considered while imposing the punishment. It is contended, in the alternate, that punishment imposed is shockingly disproportionate. Finally the Complainant alleged unfair labour practices under Item-1(*a*), (*b*), (*d*), (*e*), (*f*) and (*g*) of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 and prayed for reinstatement with continuity of service and full back wages.

4. The Corporation filed its written statement at Exh. C-6 contending that the Complainant was punished many times in the past with fine, stoppage of increments, reduction in pay etc. for similar misconducts but there was no improvement on his part. He is a habitual defaulter. Application for leave for the period from 15th November 1995 to 20th November 1995 was received on 29th November 1995. No leave application was presented for the period from 2nd November 1995 to 4th December 1995. The Complainant never worked on 22nd November 1995. Eventually, a charge-sheet was served upon him. The enquiry is conducted properly by following principles of natural justice. Findings of the enquiry officer are well justifiable and not perverse.

In the alternate it sought permission to lead evidence to substantiate its action if it is held that findings of the enquiry officer are perverse. Same officer, in different capacities, can serve the charge-sheet, make an enquiry and impose the punishment as per D. and A. Procedure of the Corporation. Complainant's repeated absence affected day to day administration. Proved misconducts are serious one and hence, punishment of dismissal is legal and proper. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

5. Learned Labour Court framed a preliminary issue at Exh. O-3 regarding fairness of the enquiry and held *vide* order dated 25th November 1998 that the enquiry is fair and there is no violation of principles of natural justice. It then framed issues at Exh. O-4 and the parties went to the trial. None of the parties led oral evidence. The Corporation produced entire enquiry papers. Learned Labour Court, on perusal of evidence and hearing both parties, held that findings of the enquiry officer are perverse. Reasons for absence are justifiable and punishment of dismissal is shockingly disproportionate. It then held that Corpotation's act is an unfair labour practice. Ultimately, it allowed the complaint as above *vide* Judgment and Order dated 10th March 1999. The same is challenged in this revision.

6. I heard both sides. Considering rival submissions, following points arise for my determination :—

(1) Whether the Corporation was entitled to lead evidence to substantiate its action after holding that findings of the enquiry officer are perverse ?

(2) Whether the impugned decision directing reinstatement with continuity of service and full back wages is sustainable in law ?

(3) What order ?

7. My findings, on above points, are as under :—

(1) Yes.

(2) No.

(3) Revision Application is partly allowed.

Reasons

8. Corporation's Law Officer took me through the written statement at Exh. C-6 and submitted that the Corporation has specifically prayed for permission to lead evidence to substantiate its action if findings of the enquiry officer are held to be perverse. However, the Labour Court has altogether ignored this material aspect and directly recorded affirmative finding of unfair labour practice. In support of his arguments he relied on the decision of Hon'ble Apex Court in *Bharat Forge Ltd.* V/s. *A. B. Zodage* reported in 1996 II CLR at page-345.

9. Shri U. B. Jadhav, learned Advocate representing the Complainant replied that no submissions were made before Labour Court regarding permission to lead the evidence. As such, now the Corporation is estopped from raising such plea.

10. It is pleaded in para-17(ii) of the written statement (Exh. C-6) that the Corporation prays for leave to prove the Charges in Court if the Court comes to the conclusion that findngs of the enquiry officer are perverse. Learned Labour Court is altogether silent as to why no opportunity was extended to the Corporation to lead evidence to substantiate its action. This is an error apparent on the face of record. As held by Hon'ble Apex Court in Bharat Forge's case, the Corporation was entitled to lead evidence in support of its action. Learned Labour Court ought to have ascertained regarding Corporation's such plea after holding findings of the enquiry officer to be perverse. I therefore, answer point No. 1 in the affirmative.

11. It consequently follows that impugned decision permitting the Corporation to lead evidence in support of its action is unsustainable in law. Accordingly, I answer point No. 2 in the negative.

12. In the background of above discussion and findings, the matter is required to be remanded back to the Labour Court for extending an opportunity to lead evidence to both parties, by setting aside impugned decision.

13. Law Officer Shri Kulkarni submitted that now the Complainant is reinstated in service as per orders of Labour Court. In my judgment, therefore, his reinstatement needs to be continued subject to final decision of the complaint.

14. To conclude, I pass following order.

Order

(*i*) The Revision Application is partly allowed.

(*ii*) Impugned decision directing reinstatement with continuity of service and full back wages is set aside.

(*iii*) The matter is remanded to Labour Court. The Labour Court is directed to permit the Corporation to lead evidence to substantiate its charges as well as to the Complainant and decide the complaint expeditiously.

(*iv*) R. & P. be sent to Labour Court and the parties shall appear there on 18th October, 2002.

(*v*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 25th September 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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